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No. 48

In the Supreme Court of the United States

October Term, 1942

W. B. PARKS, DIRECTOR OF AGRICULTURE, AGRICULTURAL PRORATE ADVISORY COMMISSION, BASIN PRORATION ZONE No. 1, ET AL., APPELLANTS

v.

PAULINE L. BROWN

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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In the Supreme Court of the United States

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No. 46

W. B. PARKER, DIRECTOR OF AGRICULTURE, AGRICULTURAL PRORATE ADVISORY COMMISSION, RAISIN PRORATION ZONE NO. 1, ET AL., APPELLANTS

v.

PORTER L. BROWN

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINION BELOW

The opinion of the district court (R. 30) is reported in 39 F. Supp. 895.

JURISDICTION

The judgment of the district court was entered on December 4, 1941 (R. 61). Petition for appeal was filed on December 26, 1941, and was allowed on the same day (R. 63, 65).

The jurisdiction of this Court is conferred by Section 266 of the Judicial Code as amended, 28 U. S. C., sec. 380, and Section 238 of the Judicial Code as amended, 28 U. S. C., sec. 345. Probable jurisdiction was noted on April 6, 1942.

QUESTIONS PRESENTED

The questions which are considered in this brief are:

(1) Whether the marketing program for raisins involved in this proceeding is rendered invalid by federal agricultural legislation;

(2) Whether the program is rendered invalid by the Sherman Act;

(3) Whether the program is invalid under the commerce clause apart from any federal statute.

STATUTES INVOLVED

The statutes involved are the California Agricultural Prorate Act, as amended, the Federal Agricultural Marketing Agreement Act of 1937, and the Sherman Act. Annotated compilations of the first two statutes are attached hereto as appendices to this brief, *infra*.

STATEMENT

Appellee, a producer and packer of raisins in the State of California, instituted this proceeding to restrain the enforcement as against him of a program, put into effect under the authority of the California Agricultural Prorate Act as amended,

to control the marketing of the 1940 crop of raisins produced in Raisin Proration Zone No. 1 (referred to herein as the Zone). Appellants are certain officials and organizations charged with administration of this marketing program.[1]

In the district court the parties stipulated certain facts, and oral testimony and certain exhibits were also introduced. A three-judge district court, with one judge dissenting, held that the raisin marketing program directly interfered with and burdened interstate commerce and was therefore invalid under the commerce clause of the Constitution. The court entered appropriate findings of fact and conclusions of law (R. 51–60) and permanently enjoined appellants from enforcing the program against appellee (R. 61).[2] This Court, after argument on appeal at the 1941 Term, restored the case to the docket for reargument and requested the parties to discuss the questions whether the State statute as applied in this case is rendered invalid by the action of Congress in passing the Sherman Act, the Agricultural Adjustment Act as amended, or any other act of Congress. The order restoring the case to the docket requested the Solicitor General to file a brief as *amicus curiae*.

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[1] Appellants are the Director of Agriculture of the State of California, the Agricultural Prorate Advisory Commission of that State and its members, and the Proration Program Committee of Zone No. 1 and certain of its members.

[2] The injunction did not extend to unwholesome, unsound, or inferior raisins (R. 62).

The commercial production of raisins in the United States is confined to California,[3] and practically all of the raisin production of that State is within the Zone.[4] Ninety to ninety-five percent of the raisins produced therein which are marketed and consumed as raisins for human consumption are shipped to points outside the State of California (R. 16). Since imports are negligible,[5] it follows that any control exercised over the supply of Zone raisins permitted to enter commercial channels and over prices to be paid producers directly affects and controls the supply of raisins, and their price, throughout the entire country.

The producer of raisins picks bunches of grapes and spreads them for drying on trays laid between the rows of vines, turns the grapes from time to time so that all sides are exposed to the sun, and when the grapes have properly dried, places them in "sweat" boxes. The grapes thus cured into raisins are sold and delivered in the

[3] United States Tariff Commission, *Grapes, Raisins & Wines* (Rep. No. 134, 2d series), p. 142.

[4] See appellants' brief filed in this Court at the 1941 Term (No. 1040), p. 3.

[5] For the 1937–1938 season, the latest period for which figures are given, the United States production of raisins available for domestic consumption was 139,000 tons, exports were 71,000 tons, and imports 200 tons. *Grapes, Raisins & Wines, supra*, p. 141. Imports, therefore, represented less than 1/8 of 1% of the total available domestic supply.

sweat boxes to packers, whose plants are all located in the Zone (R. 15, 57).

To prepare the raisins for commercial sale, the packers, of whom there are about 40, clean and stem the raisins, sort them as to size, and put them in containers (R. 16, 104–106, 126–128). One variety is also seeded (R. 109, 113). Except for packaging, such "processing" is all done by machinery and takes from eight to ten minutes in the largest plant and from one to six minutes in the plants of the smaller packers (R. 107, 130–131). Raisins which are marketed in clusters, unstemmed, and which are known as Muscat layers, may not require even this simple preparation for market. If they have been properly cured in the field, the entire process consists of lifting the raisins from the sweat boxes and placing them in larger containers (R. 85, 129–130). Sometimes they are steamed so as to make the stems more pliable for packing (R. 130), and the largest packer always does this (R. 113–114).

The packers sell their raisins through agents, brokers, jobbers, and other middlemen located throughout the country (R. 16, 116, 129, 154–155). Until he is ready to ship to a purchaser, the packer keeps his raisins in the form in which they have been received because they keep better in this form than after they have been packed (R. 16, 108, 121, 127). Packaging is therefore an incident to, and immediately precedes, shipment (R. 133).

The length of time the raisins remain at the packing plants before shipment varies from a few days up to two years, depending upon the packer's current supply of raisins and the market demand (R. 16, 107–108). The small packer, who cannot afford to finance storage of stock throughout the entire period between one crop season and the next, frequently exhausts his storage stock by the end of April (R. 132–133). When he then accepts orders calling for fall delivery and at the same time makes forward contracts for the purchase of raisins from producers, part of the raisins which he receives during the delivery season* are immediately shipped out in fulfillment of outstanding purchase orders and the rest are stored (R. 128–129, 131–132). While during recent years there has always been a substantial carry-over of raisins at the end of each crop season, this carry-over is generally in the hands of the larger packers able to finance it (R. 17, 132–133). About 75% of the entire crop is ordinarily handled by the five largest packers (R. 119).

The state seasonal marketing program for raisins for the 1940–1941 season was adopted and became effective September 7, 1940 (R. 18). The main or basic program, which is entitled "Market-

*A large percentage of the raisins produced in the Zone is delivered to packers within 90 days after the start of the delivery season, which begins between September 15 and September 30 (R. 17).

ing Program for Raisins, as Amended,"[7] had become effective on July 23, 1940. Both are administered by a Proration Program Committee appointed by the Director of Agriculture of the State of California from nominees elected by producers in the Zone (Program, Art. II, Secs. 2, 5; Act, Sec. 15[8]). The acts of the Committee, however, are subject to the approval of the Director of Agriculture (Act, Sec. 22).

The major provisions of the program, as implemented by the seasonal marketing program for 1940,[9] are:

The Committee shall fix a standard grade for raisins (Art. X, Sec. 4). Edible raisins which meet this standard are designated "standard raisins"; those which fall below it are designated "substandard raisins"; and raisins which are unfit for human consumption are designated "inferior raisins" (Art. I, Sec. 1 (n), (o), (p)).

[7] This "program" is printed in pamphlet form in appellants' jurisdictional statement, pp. 7–37, and, by stipulation of the parties (R. 167), it was not reprinted in the record on appeal. Subsequent references herein by article and section refer to this pamphlet.

[8] The reference is to the California Agricultural Prorate Act, attached hereto as Appendix B.

[9] The "Marketing Program" does not itself prescribe the percentages of raisins to be delivered to the various pools or the prices. Those are to be determined by the "seasonal marketing programs" provided for in Article III of the main program. The essential features of the 1940 seasonal marketing program are described at R. 18–19.

The Committee shall establish receiving stations to which every producer must deliver all raisins which he desires to market (Art. X, Sec. 1). The raisins are graded at these stations and the Committee retains those which, under the provisions of the program, are to go into the inferior, surplus, and stabilization pools. All inferior raisins must be placed in the inferior raisin pool (Art. IV, Sec. 1). All substandard raisins must be placed in the surplus pool (Art. V, Sec. 1). Of the standard raisins, 20% must be placed in the surplus pool and 50% in the stabilization pool (R. 18). The producer is permitted to sell the remaining 30% of his standard raisins, called "free tonnage", through ordinary commercial channels, subject to the requirement that he obtain a secondary certificate authorizing such marketing and pay the certificate fee of $2.50 for each ton covered by the certificate (R. 19).[10]

Raisins in the inferior raisin pool and in the surplus pool are to be disposed of "only for assured by-product and other diversion purposes" (Art. IV, Sec. 4; Art. V, Sec. 4). Raisins in the stabilization pool are to be disposed of "in such manner as to maintain stability in the markets and to dispose of such raisins," but no raisins

[10] The program provides that a secondary certificate shall accompany all deliveries of free tonnage into ordinary commercial channels and that secondary certificates shall be issued "to control the time and volume of movement" of free tonnage into commercial channels (Art. XI, Sec. 1 (b)).

(apart from those subject to special lending or pooling arrangements with the Federal Government) shall be sold at less than "the prevailing market price" for raisins of the same variety and grade on date of sale (Art. VI, Sec. 4).

The Committee may pledge raisins in the surplus and stabilization pools in order to secure funds to finance pool operations and to make advances to growers (Art. V, Sec. 3; Art. VI, Sec. 3). Appellants negotiated an agreement with the Commodity Credit Corporation under which that Corporation, as provided in the agreement, furnished funds to make advances to producers on account of raisins delivered into the surplus and stabilization pools (R. 19). The agreed amount of these advances, paid at time of delivery, was $27.50 or $25 a ton (depending upon the variety of the raisins) for deliveries into the surplus pool and $55 or $50 a ton for deliveries into the stabilization pool (R. 18, 19).

The Committee is required to keep separate accounts for each of the three pools established by the program and, upon liquidation of the raisins in any pool, each producer is to receive his *pro rata* share of the net proceeds of the pool (Art. IV, Sec. 5; Art. V, Sec. 5; Art. VI, Sec. 5).

There was a seasonal proration program for raisins under the California law for the 1938–1939 season, but none for the 1939–1940 season (R. 20). In the summer of 1940, before it was announced

that a proration program would be put into effect for the 1940–1941 season, the sweat-box price of raisins was $45 a ton; after August 30, 1940, the date of the announcement that a proration program would be adopted, the price became $47 or $48 per ton; after September 7, 1940, the date that the program was adopted, the price became $55 a ton or higher (R. 76–77, 89, 91–92).

SUMMARY OF ARGUMENT

I

The Agricultural Marketing Agreement Act authorizes the Secretary of Agriculture to establish the same type of regulation as the California Raisin Program. When a federal marketing order is issued, a state program would clearly be superseded. The question whether a state program can stand in the absence of a federal order depends upon the intention of Congress. Where there is no express manifestation of such intention, it is necessary to determine whether the state law stands as an obstacle to the accomplishment of the purposes of the federal statute.

The federal act imposes upon the Secretary of Agriculture a mandatory duty to institute proceedings leading to the issuance of a marketing order if he has reason to believe that such an order will tend to effectuate the statutory policy of maintaining farm prices at the parity level. The object of the state law is to establish marketing programs

whenever surpluses affect market "stability," without any relationship to parity. The federal act is more concerned than the state with the interests of consumers, since it provides that its machinery shall not be used to maintain prices above the parity level. Inasmuch as a state program maintaining prices above parity would be contrary to the policy of the federal act, and since the Secretary is to issue a federal order whenever such a program would tend to effectuate the parity policy, there is little room left in which Congress could have intended a state program to be operative. Furthermore, the requirement that no federal order can go into effect without the approval of two-thirds of the producers will not function in the manner contemplated by Congress if a state program is also in the picture, since in that case the federal order will have to compete with and outbid the state before it can become effective.

In our view a state program such as this normally will tend to interfere with the effective operation of the federal statute in the manner intended by Congress. In the present case, however, the loan agreement between Commodity Credit Corporation and the State Program Committee shows that this particular state program was regarded by the Department of Agriculture as entirely consistent with the policy of the federal statute. The manifestation of approval of the state program by the very persons charged with the administration

of federal agricultural marketing policy is sufficient, in our opinion, to show that the program here involved was not inconsistent with federal agricultural legislation.

II

The Sherman Act prohibits monopolies of interstate trade and restraints which take the form of eliminating price competition. The state program is inconsistent with both of these prohibitions. Congress did not intend that the policy embodied in the Sherman Act should be overriden by state legislation. Although the states are not precluded from enforcing normal "police" regulations which interfere to some extent with interstate trade, they may not monopolize the supply or control the price of a commodity distributed throughout the nation. The approval given the state program in the Commodity Credit Loan Agreement did not immunize it from the Sherman Act. The general power granted Commodity Credit to fix the terms and conditions of loans on agricultural commodities did not empower it to grant exemptions from the antitrust laws.

III

In the absence of any manifestation of congressional intention the commerce clause itself prohibits states from regulating those subjects which "are in their nature national" (*Cooley* v. *Board of Port Wardens*, 12 How. 299), although they may

regulate even interstate activities which are primarily of local concern. *South Carolina Highway Department* v. *Barnwell Bros.*, 303 U. S. 177; *California* v. *Thompson*, 313 U. S. 109. An important consideration is whether the burden of a state law falls primarily upon persons outside of the regulatory state. *South Carolina Highway Department* v. *Barnwell Bros., supra.*

The California statute and raisin program permit a state agency to monopolize the entire national supply of raisins, to determine the quantity to be shipped in interstate commerce, and to control the interstate price structure. We believe that, if anything is of national commercial significance, the supply and price level of a commodity moving in interstate commerce fall within that category. Furthermore, inasmuch as 90 to 95 percent of the raisins covered by the program are sold interstate, the burden of the regulation will fall primarily upon consumers in other states. Since the benefits accrue to the California producers, the action of the state "is not likely to be subjected" to the normal "political restraints" upon legislation whose impact is felt equally by interests within the state. Accordingly, we believe that the California raisin program is unconstitutional.

ARGUMENT

Introduction.—This case involves the California Raisin Program for 1940–41. No question is presented as to the relationship of the state act and

program to the Emergency Price Control Act of 1942 or other federal wartime measures designed to keep markets and prices under control. We shall therefore treat the case as involving only pre-war federal legislation, and shall assume that all questions as to the relation of the state law to the federal war program may be reserved until such time as they may arise.

The Court has requested a discussion of the validity of the state statute and program in the light of federal agricultural legislation and the Sherman Act. The two points are related, since the statutes must be read together. For purposes of convenience, however, we have considered the agricultural legislation entirely separate and apart from the Sherman Act in Point I, and have taken up the relationship between the statutes in the treatment of the Sherman Act in Point II. In Point III we consider the constitutionality of the state program under the commerce clause itself apart from congressional legislation. Although the Court has not requested reargument of that question, we think it may be determinative of the case and accordingly have gone into it quite fully.

I

The Relationship Between the California Raisin Program and Federal Agricultural Legislation

Background. — The Agricultural Adjustment Act, enacted on May 12, 1933 (48 Stat. 31), twenty-

four days before the California Agricultural Prorate Act (Cal. Stats. 1933, c. 754), authorized the Secretary of Agriculture to enter into marketing agreements (Sec. 8 (2)) with and to issue licenses (Sec. 8 (3)) to persons engaged in the handling of agricultural products in the current of interstate or foreign commerce in order to effectuate the declared policy of the Act—the attainment of "parity prices"[11]—and to restore normal marketing conditions.

On May 29, 1934, the Secretary of Agriculture executed a marketing agreement, and on May 31 issued a substantially identical license covering the California raisin industry.[12] The license provided for the establishment of minimum prices for raisins and for the diversion of a percentage of the crop from the market for use as by-products. Fifteen percent of the 1934 crop was diverted from the market under this program, which resulted in increased returns for growers during that year.[13]

The difficulty experienced by the Department, particularly after the decisions of this Court in

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[11] Parity is a shorthand term used to describe a price which will accord farmers a purchasing power with respect to articles they buy equivalent to the purchasing power of prices in the base period, 1909–14. See *United States* v. *Rock Royal Co-operative, Inc.*, 307 U. S. 533, 574–575.

[12] United States Department of Agriculture, Agricultural Adjustment Administration, *Marketing Agreement and License for Packers of California Raisins* (Agreement No. 44, License No. 59).

[13] See United States Tariff Commission, *Grapes, Raisins, and Wines* (Report No. 134, 2d Series), pp. 157, 65.

Panama Refining Co. v. *Ryan,* 293 U. S. 388, on January 7, 1935, and *Schechter Poultry Corp.* v. *United States,* 295 U. S. 495, on May 27, 1935, in enforcing this program against the minority of packers unwilling to comply, led to considerable dissatisfaction on the part of those who were complying and to the termination of the program by the Secretary on September 13, 1935.

On August 24, 1935, the Agricultural Adjustment Act was amended. A new Section 8c, replacing Section 8 (3), authorized the Secretary to issue marketing orders instead of licenses (49 Stat. 753). The amendment contained a more restricted delegation of power to the Secretary [14] and was limited to transactions subject to the federal commerce power.[15] The provisions of the Agricultural Adjustment Act pertaining to marketing orders were reenacted, with minor modifications, in the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246, 7 U. S. C. Sec. 608c).

The raisin crop for 1936 was small, but a large crop in 1937 caused the price to decline by the end of that year and resulted in an appeal for federal assistance.[16] The Commodity Credit Corporation agreed to support the growers with a loan not to exceed two and a half million dollars

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[14] *United States* v. *Rock Royal Co-operative, Inc.*, 307 U. S. 533, 574.

[15] *United State* v. *Wrightwood Dairy Co.*, 315 U. S. 110.

[16] See United States Tariff Commission, *Grapes, Raisins, and Wines* (Report No. 134, 2d Series), pp. 157, 65.

and eventually took approximately thirty thousand tons of raisins off the market by selling them to the Federal Surplus Commodity Corporation.[17]

The California raisin proration program was originally adopted in 1937 and amended on July 23, 1940. As supplemented by the Seasonal Marketing Program for 1938–39, it provided for the delivery by each grower of twenty percent of his 1938 product to a surplus pool, where it would be held until it could be marketed without competing with the free tonnage (R. 21).[18] The state officials were aware of their inability to maintain a proration plan unless they were in a position to advance money to the growers when the crop became available for market. The only place from which such funds could be borrowed was the Commodity Credit Corporation, which was not then in the Department of Agriculture but which was created for the purpose of lending money on agricultural products.[19] In so far as marketing programs were concerned the Corporation was guided by the advice of officials of the Department of Agriculture who also administered the Agricultural Marketing Agreement Act and the surplus commodities program. These officials approved the provisions of the state program, and agreed to recommend to Commodity Credit that the loans

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[17] *Id.*, at pp. 157–158, 66.

[18] *Ibid.*

[19] Agricultural Adjustment Act, sec. 302, 52 Stat. 43, 7 U. S. C., sec. 1302. See p. 46, *infra*.

be made. Once financing was assured, a state program in the form approved by the Department of Agriculture was put into operation.[20]

In 1939 there was again a large surplus, and the state again requested federal financial assistance. The Department of Agriculture determined to purchase a substantial portion of the surplus for relief purposes but refused to finance a state marketing program,[21] and for that reason, among others, no seasonal program was adopted for that year (R. 20).

The state again requested support for a program for 1940. A state committee headed by the State Director of Agriculture came to Washington to see if a seasonal plan satisfactory to the Department of Agriculture (which by that time included the Commodity Credit Corporation) could be devised. The details of the plan finally adopted, described *supra* pp. 7–9, were worked out by this committee and the staff of the Surplus Marketing Administration. Upon the advice of the Administrator of the Surplus Marketing Administration, Commodity Credit agreed to advance the necessary funds.[22]

The state seasonal program became effective on September 7, 1940 (R. 18). The loan agreement with Commodity Credit was executed October 11,

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[20] These facts are based upon information obtained from the Department of Agriculture.

[21] *Ibid.*

[22] *Ibid.* See also R. 19.

1940. The contract between Commodity Credit and the state zone contained two important features. The loan was conditioned on the zone requiring all growers to deliver their raisins to surplus and stabilization pools in the proportions specified in the approved program.[23] The Zone further agreed that [24] it—

> shall dispose of pledged raisins in accordance with such policies as may be approved by a committee to be designated for that purpose by the Secretary of Agriculture of the United States.

Unless such committee otherwise indicated, pledged raisins in the stabilization pool were to be sold whenever a price equal to the amount of the loan, plus interest, plus seventy-five cents per ton to cover shrinkage could be obtained.[25] As required by law (see p. 47, *infra*), this agreement was

[23] Section 3 of the agreement between the State Zone and Committee and Commodity Credit provided that—"The Zone agrees that it will require all producers of raisins to deliver to the Surplus Pool, in sweat boxes or picking boxes, twenty percent (20%) of their 1940 production of raisins of each of the varieties named in this paragraph of standard quality or better and to the Stabilization Pool, in sweat boxes or picking boxes, fifty percent (50%) of their 1940 production of raisins of each of the varieties named in this paragraph of standard quality or better, and that not less than twenty-eight percent (28%) of the raisins tendered to Commodity for a loan hereunder shall be from the Surplus Pool."

[24] Section 8.

[25] *Ibid.*

approved by the Secretary of Agriculture and the President.

The Secretary of Agriculture appointed as the committee to approve the policies of the State Zone the Administrator of the Surplus Marketing Administration, the Assistant Administrator, and the Chief of the Fruit and Vegetable Division. This committee, known as the Sales Policy Committee, notified the Zone as to the prices at which pledged raisins must be sold. The prices established were minimum prices, but they were also, in effect, maximum prices, since the Zone was required to accept any offers made at the prices specified. The Committee fixed as the price the amount of the loan plus five dollars per ton to cover costs to Commodity Credit. An object of requiring offers to be accepted at that price was to prevent the Zone from holding the pledged raisins for such high prices as might prevent their sale.[36] The State Zone established the prices approved by the federal committee. Subsequently, it sought to have these prices increased. The Committee declined to approve such an increase, but suggested that a greater return to the farmer could be secured by transferring raisins from the surplus to the stabilization pool. The Zone followed this suggestion, and all of the raisins in the stabilization and surplus pools were sold.[37]

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[36] This provision was included in the agreement because of the difficulties the Department of Agriculture and Commodity Credit had had with another state program.

[37] See note 20, *supra*.

A. THE AGRICULTURAL MARKETING AGREEMENT ACT AUTHORIZED THE SECRETARY OF AGRICULTURE TO ESTABLISH THE SAME TYPE OF REGULATION AS THE STATE RAISIN PROGRAM

The Agricultural Marketing Agreement Act[28] authorizes the Secretary of Agriculture to issue orders limiting the quantity of specified agricultural products, including fruits, which may be marketed in the current of, or so as directly to affect, interstate commerce. Such orders may allot the amounts which handlers may purchase from any producer by means which equalize the burden among producers, may provide for the control and elimination of surpluses, and for the establishment of reserve pools. Section 8c (6). These powers unquestionably would extend to the control of surpluses in the raisin industry through a pooling arrangement such as was promulgated by the State of California in the instant case.[29]

The federal statute differs from the state in that its sanctions fall upon the handlers alone,

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[28] An annotated compilation of the Act is attached to this brief as Appendix A.

[29] The validity of such a reserve pool program with respect to walnuts and hops has been sustained. *Wallace* v. *Hudson-Duncan & Co.*, 98 F. (2d) 985 (C. C. A. 9); *United States* v. *Hughes*, 28 F. Supp. 977 (E. D. Wash.); *United States* v. *Washington State Hop Producers*, decided September 22, 1939 (E. D. Wash. unreported). Although, in the walnut program, the reserve pool was maintained by handlers rather than growers, the original federal raisin program of 1934 and the hop marketing order of 1938 fixed the amount that handlers could purchase from growers.

while the state act applies both to handlers and growers. But the transactions regulated may be the same. Section 8a (6) (B) of the federal act provides for the equitable allotment among producers of the amount to be purchased by handlers. Section 8c (6) (D) provides for eliminating surpluses by equalizing the burdens among producers as well as handlers. The federal statute thus clearly contemplates that marketing orders may regulate sales by growers to handlers. Such sales are controlled whether the penalties for failure to comply with a program regulating them fall on the buyers alone or on both buyers and sellers.

We do not anticipate that it will be argued that Congress lacks constitutional power to impose a regulation similar to the state program here involved. The power of Congress to control the amount marketed interstate and the interstate price structure, through regulation of the sales preceding preparation and marketing in interstate commerce, cannot be doubted. *United States* v. *Rock Royal Co-operative, Inc.*, 307 U. S. 533, 568–569; *Currin* v. *Wallace*, 306 U. S. 1; cf. *United States* v. *Wrightwood Dairy Co., supra; National Labor Relations Board* v. *Fainblatt*, 306 U. S. 601; *Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148, 153–154.[20] The State has contended (Br.

[20] The question of federal power over intrastate transactions affecting the interstate supply and price structure is treated in the Government's brief filed in *Wickard* v. *Filburn*, No. 1080, 1941 Term, No. 59, this Term.

30–31) that its program, operating upon the movement of raisins from growers to packers in California, controls intrastate activities antecedent to interstate commerce, and for that reason cannot be said unduly to burden interstate commerce.[31] But whether the sales are interstate or intrastate is immaterial, in so far as the exercise of federal power is concerned. For, as the State's brief (pp. 32–33) seems to recognize, the regulatory power of Congress extends behind the point at which interstate commerce begins. In dealing with an analogous problem in *Illinois Natural Gas Co.* v. *Central Illinois Pub. Serv. Co.*, 314 U. S. 498, 509, this Court said:

> In determining the scope of the federal power over the proposed extension of facilities and sale of gas, it is unnecessary to scrutinize with meticulous care the physical characteristics of appellant's business, in order to ascertain whether, as the court below held, the interstate commerce involved in bringing the gas into the state ends before delivery to distributors. In any case, the proposed extension of appellant's facilities is so intimately associated with the commerce, *and would so affect its volume moving into the state and distribution among the states, as to be within the Congressional power to regulate*

[31] We do not believe that the sales by the growers to the packers are definitely outside of the interstate sphere. See pp. 83–85, *infra*.

those matters which materially affect interstate commerce, as well as the commerce itself. * * * [Italics supplied.]

For these reasons we think it clear that under the Agricultural Marketing Agreement Act the Secretary of Agriculture is empowered to regulate the raisin industry through a program of the same type as the California program involved in this case.

B. A STATE PROGRAM WOULD ORDINARILY BE INVALID IF A FEDERAL ORDER WERE IN EFFECT

We have shown that, in the Agricultural Marketing Agreement Act, Congress authorized the Secretary of Agricultural to promulgate orders regulating the same transactions as are covered by the California raisin program. Although a similar federal plan was in effect in 1934–35, no federal order applicable to raisins has been issued since then.

It would obviously be impossible for the state and federal governments, unless acting cooperatively, at the same time to establish and operate stabilization and surplus pools through which growers were required to dispose of specified percentages of their crop. The state program here involved required the growers to turn over 70 percent of their crop to the Zone stabilization and surplus pools. If a similar federal program were established, the growers obviously could not de-

liver 70 percent of their products to both state and federal governments. If a grower complied with one order, he would inevitably disregard the other. In such circumstances, the federal program would prevail, and the state program would be superseded. We think that as a general thing, even apart from such a definite conflict, the separate regulation of marketing by the two sovereignties would cause such contradiction and confusion as to require abandonment of the state program.[22]

C. THE VALIDITY OF THE STATE PROGRAM IN THE ABSENCE OF A FEDERAL ORDER

The question here is whether the state program may stand in the absence of a federal order.

Whether a federal regulation of commerce delegating to administrative officials authority which has not been exercised supersedes a state law depends upon the intention of Congress. If it was intended that the federal administrative agency be given exclusive authority over the subject, the states may not establish a regulatory system of their own. If, on the contrary, Congress did not intend the subject to go unregulated in the absence of federal administrative action, state laws applicable to the subject are valid. As the Chief

[22] This would, of course, not be true if care were taken to see that the programs were complementary or jointly administered, pursuant to Sec. 10 (i) of the Federal Act. Cf. *United States* v. *Rock Royal Co-operative, Inc.*, 307 U. S. 533, 548.

Justice declared in his dissenting opinion in *Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148, 170:

> In such circumstances the state's authority to act turns upon the question, which this Court has often been called upon to answer, whether the failure of the federal official to exercise his full power is in effect a controlling administrative ruling that no further regulation by either federal or state government is needful. * * *

This principle has been frequently applied. In *Napier* v. *Atlantic Coast Line Railroad Co.*, 272 U. S. 605, the Court held that the states could not supplement the Federal Boiler Inspection Act, which authorized the Interstate Commerce Commission to require locomotives to be equipped with devices essential to safety, by compelling the use of safety devices in addition to those required by the Commission. The failure of the Commission to impose particular requirements was treated as a finding that they were not necessary. In *Northern Pacific Ry Co.* v. *Washington*, 222 U. S. 371, the Court held that the provision in the Federal Sixteen Hour Law that the statute should become operative a year from its enactment was a manifestation of congressional intention that the railroads be given a year to adjust themselves to the new requirement, which precluded the states from imposing an identical rule during the interim period. See to the same effect *Oregon-Washing-*

ton R. & Nav. Co. v. *Washington*, 270 U. S. 87; *Alabama and V. Ry.* v. *Jackson and E. Ry.*, 271 U. S. 244; *Missouri Pacific R. Co.* v. *Porter*, 273 U. S. 341. On the other hand, in *Welch Co.* v. *New Hampshire*, 306 U. S. 79, the Court upheld a state maximum hours law for drivers of motor vehicles in the absence of action by the Interstate Commerce Commission under Section 204 of the Motor Carrier Act, on the ground that Congress did not intend state safety measures to be nullified before the federal agency prescribed regulations on the subject. See to the same effect *Eichholz* v. *Public Service Commission*, 306 U. S. 268; *Mintz* v. *Baldwin*, 289 U. S. 346; *Northwestern Bell Telephone Co.* v. *Nebraska State Ry. Commission*, 297 U. S. 471. Cf. *Allen-Bradley Local No. 1111* v. *Wisconsin Employment Relations Board*, 315 U. S. 740.

A definitive statement either in the federal statute or in its legislative history manifesting a congressional intention that the failure to exercise administrative powers would permit or preclude state regulation would, of course, solve the problem. But, as has generally been true in other cases, no such expression of opinion on the point is available here. In such circumstances it is necessary to compare the federal and state statutes and to endeavor to ascertain from the manner in which they will operate whether and to what extent the state law, as here applied, "stands

as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines* v. *Davidowitz,* 312 U. S. 52, 67. If the purpose of the federal Act cannot "be accomplished—if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect—the state law must yield to the regulation of Congress within the sphere of its delegated power." *Savage* v. *Jones,* 225 U. S. 501, 533; *Corn Products Refining Co.* v. *Eddy,* 249 U. S. 427, 435; *Cloverleaf Butter Co.* v. *Patterson,* 315 U. S. 148. With these considerations in view, we turn to an analysis and comparison of the pertinent provisions of the two statutes.

1. *The statutory standards and policies*

The federal statute provides that the Secretary of Agriculture shall hold a public hearing if he "has reason to believe," and shall issue an order if he "finds," that the issuance of an order "will tend to effectuate the declared policy of" the Agricultural Marketing Agreement Act. Section 2 of the Act, entitled "Declaration of Policy," provides that: "It is hereby declared to be the policy of Congress" (1) to "maintain such orderly marketing conditions for agricultural commodities in interstate commerce as will establish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to

articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period" 1909–1914, and (2) "to protect the interest of the consumer" by approaching that price level (hereafter referred to as the parity level) in a manner deemed "to be in the public interest and feasible in view of the current consumptive demand," and by "authorizing no action" designed to maintain prices above that level. If the purchasing power during the base period specified in Section 2 "cannot be satisfactorily determined from available statistics of the Department of Agriculture," Section 8e permits the Secretary of Agriculture to establish a base period for such portion of the time from August 1919 to July 1929 as he finds such statistics to be available.

The California Agricultural Prorate Act [33] provides that the Agricultural Prorate Advisory Commission shall approve a proposed marketing program if it "is reasonably calculated to carry out the objectives" of that Act (Section 15). These objectives, as set out in Section 1, are to eliminate "the unnecessary and unreasonable waste of agricultural wealth," including "economic waste" (Section 2 (b)), "involved in the

[33] Cal. Stats. 1933, c. 754, as amended, now found in Deering's Gen. Laws 1937, Art. 143a, p. 60, 1939 Supp., p. 993, 1941 Supp., p. 1846. The California act is attached as Appendix B.

harvesting or preparation for and delivery to market of agricultural commodities for which there exists only a limited consumer demand."

After a proposed marketing program has been approved, Section 18.1 provides that:

> The marketing program to be made effective in any proration zone shall be so formulated as to rectify as far as possible the adverse marketing conditions specified in Section 10 hereof, and to maintain market stability under the limitations of this act. * * *

The "adverse marketing conditions specified in Section 10" consist of the occurrence of "agricultural waste," and the imperilling of the economic stability of the industry concerned "by the existence or imminence of a seasonal or annual surplus." Section 10 also requires the Commission to find whether the operation of a proration program will result in unreasonable profits to producers and whether the commodity cannot be marketed otherwise at a reasonable profit to producers, but the statute does not appear to make findings on this point relevant or controlling in any connection.[44]

Section 19.1 provides that the program committee shall be empowered to adopt any of a

[44] Under the original 1933 Act no program could be approved unless the findings required by Section 10, including a finding that the program would not result in unreasonable profits to producers, were made. This requirement was eliminated in 1939. Cal. Stats. 1939, c. 894.

number of specified means "for the purpose of minimizing the effect of surpluses or other adverse market conditions." The Committee may establish surplus, stabilization, and diversion pools. The contents of surplus and diversion pools are to be disposed of so as "to prevent any part of the commodity so disposed of from directly competing with the part of the crop marketed through the usual channels of trade" (Section 19.1 (a) (1), (3)). The contents of stabilization pools are to be disposed of "as the program committee deems advisable, and consistent with the maintenance of stabilized marketing conditions" (Section 19.1 (a) (2)). The Committee may also, by means of volume or time limitations, diversion, or other means, "adopt and apply methods for correlating the marketable supply of any commodity to the reasonable market demands therefor" (Section 19.1 (d)).

The exercise of the powers granted to the program committees are subject to the approval of the State Director of Agriculture, but he is to approve if he finds that the Committee is conforming to the provisions of the program and the Act (Section 22).

This review of its provisions indicates that the objective of the California Act is to prevent excessive supplies of agricultural commodities from "adversely affecting" the market. And although the statute speaks in terms of "economic stabil-

ity" and "agricultural waste," rather than of price, it is apparent from the Act as a whole that the "adverse marketing conditions" feared are low prices to the producers. As the raisin program itself demonstrates, the Act does not prevent waste of agricultural commodities in any physical sense. Although one of a number of devices available to a program committee is production control, the emphasis is upon pooling programs which dispose of all of a commodity, after it has been produced, in a manner which will prevent the "excess" portion of the supply from forcing down the price of the remainder.

The state programs, including the raisin program, thus do not control production, but marketing. The raisin program is entitled "Marketing Program for Raisins."[35] The Inferior Raisin and Surplus Pools are to be disposed of at the prices most favorable to the producers, but outside of "normal marketing channels."[36] The raisins in the stabilization pool are to be sold "in such a manner as to maintain stability in the markets and to dispose of such raisins" at prices "most advantageous to the producers" but at not "less than the prevailing market price."[37]

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[35] See appellants' Statement as to Jurisdiction, p. 7. The state program is printed in full in the jurisdictional statement, pp. 7–37, and accordingly has not been reprinted in the record.

[36] Art. IV, Sec. 4; Art. V, Sec. 4.

[37] Art. VI, Sec. 4. The proviso as to no sales being made at less than the prevailing market price excludes raisins

The object of the federal statute is also to maintain "orderly marketing conditions," but for the express purpose of attaining parity prices for farm products, and with the additional provisions that, in the interests of consumers, current consumptive demand is to be considered and that no action shall be taken for the purpose of maintaining prices above the parity level (Sec. 2).

Both federal and state acts are designed to help the farmer by raising the price level of agricultural products through programs of the same general character. The state act may become operative whenever there is a surplus in excess of reasonable market demands, the federal act whenever prices are below parity. The state program is intended to "stabilize" the market without reference to any particular level of prices; the federal act, to bring about prices at the parity level but no higher. The federal act would permit prices to exceed parity, but only through the play of normal economic forces.

The California statute contains no reference to parity, and administrative action taken under it is not in any way made dependent upon parity or the determinations by the Department of Agriculture as to the base period or the prices of commodities purchased by farmers. It is not to be

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subject to loaning or pooling arrangements with the Federal Government.

presumed that the state officials administering a proration program under such a statute would make any effort to avoid maintaining prices above parity. Although raisin prices were not above parity while the 1940 seasonal program was in effect, this has not been true as to other commodities. In particular, a state program for asparagus for canning has been in operation during a period in which prices were consistently well above parity."

The objects of the state law are thus not exactly the same as those of the federal act. The latter pays more heed to the interests of the consumer. To the extent that Congress intended that a marketing program not be employed to force prices above parity and that higher prices result only from the free interplay of natural economic forces, a state program which deliberately applied artificial restraints in order to maintain prices above the parity level would be incompatible with the purpose of the federal law.

This would not be likely to occur as to a state program approved and supported by the Department of Agriculture. But in the absence of some form of cooperation between state and federal agencies, a state, even if it desired to do so, might have difficulty in adjusting its program to the flexible parity price, which fluctuates with the

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[11] This information has been obtained from the Department of Agriculture.

prices of things farmers buy and which is based upon figures deemed "satisfactory" to the Secretary of Agriculture.[39] Nor would it be feasible to regard state programs as valid whenever they were not maintaining prices above the parity level. In that case the burden of determining when parity was reached would be imposed upon the courts, where the same difficulties would be encountered. Moreover, the judicial machinery is not adapted to the control of a price level which changes from day to day.

It is of course quite likely that many state programs have not been operated in a manner which conflicts with the policy of the federal act. Nevertheless the policies of the statutes are somewhat different, and the potentiality of conflict exists.

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[39] The parity level for a particular commodity is, of course, dependent upon the period used as a base. Section 2 defines that period as 1909–1914 (except for tobacco and potatoes, as to which the base period is to be 1919–1929), but Section 8e requires the Secretary of Agriculture to use a different period if he determines that there are no satisfactory available statistics of the Department of Agriculture for that time. Section 8e demonstrates that the statistics to be used in determining the farmer's purchasing power and parity prices are those of the United States Department of Agriculture, and that the precise period to be employed in computing parity is dependent to some extent on the Secretary's opinion as to the satisfactory nature of the statistics available for the specified years. See *Wrightwood Dairy Co.* v. *United States*, 127 F. (2d) 907 (C. C. A. 7), on remand from this Court, in which the Circuit Court of Appeals upheld the exercise of the Secretary's discretion in changing the base period for the Chicago Milk Marketing Order.

Only when the state program is in some manner approved by the Department of Agriculture would there be any reasonable assurance that conflicts in policy would be avoided.

2. *The mandatory language of the federal act*

As has been indicated, a state program would be superseded by a federal order covering the same subject, and a state program maintaining prices above parity would be incompatible with the purposes of the federal act. The only time when a state marketing program would not run counter to federal policy would be when the price of a commodity was below the parity level and no federal program was in effect. The question remains as to whether Congress intended that the Secretary take steps to establish a federal program whenever such a situation called for regulation, and if that be the case, whether any room at all is left for action by the states.

Section 8c (3) of the Agricultural Marketing Agreement Act provides that—

> Whenever the Secretary of Agriculture has reason to believe that the issuance of an order will tend to effectuate the declared policy of this title with respect to any commodity or product thereof specified in subsection (2) of this section, he *shall* give due notice of and an opportunity for a hearing upon a proposed order. [Italics supplied.]

Section 8c (4) provides that—

> After such notice and opportunity for hearing, the Secretary of Agriculture *shall* issue an order if he finds, and sets forth in such order, upon the evidence introduced at such hearing (in addition to such other findings as may be specifically required by this section) that the issuance of such order and all of the terms and conditions thereof will tend to effectuate the declared policy of this title with respect to such commodity. [Italics supplied.]

Section 8c (8) provides that no order shall become effective unless the handlers of at least fifty per cent of the volume of the commodity have signed a marketing agreement with provisions similar to those in the order,[40] and unless the order is approved by two-thirds of the producers by number [41] or by volume.

Section 8c (9) provides that if the specified percentage of the handlers fails or refuses to sign a marketing agreement the Secretary may nevertheless issue an order, with the approval of two-thirds of the producers by number [42] or by volume, if, with the approval of the President, he determines (a) that the handlers' failure or refusal to sign a marketing agreement "tends to prevent the effectuation of the declared policy,"

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[40] For California citrus fruits the required percentage is 80.

[41] For California citrus fruits the required proportion is three-quarters.

[42] See note 41.

and (b) "that the issuance of such order is the only practical means of advancing the interests of the producers of such commodity pursuant to the declared policy".[49]

In brief, if the Secretary secures the approval of the requisite percentages of handlers and determines that the order is favored by the requisite percentage of producers and "will tend to effectuate the declared policy," he shall issue such order; if he fails to obtain the approval of the handlers, he must find in addition that this failure tends to prevent effectuation of the statutory policy and that the order is the only practical means of achieving it, and these findings must be approved by the President.

The committee reports, in summarizing these provisions, declare that if the Secretary finds the facts required, "he *must* issue an order." H. Rep. No. 1241, 74th Cong., 1st Sess., pp. 8–9; S. Rep. No. 1011, 74th Cong., 1st Sess., p. 9.

These statutory provisions would seem to indicate that Congress intended to impose upon the Secretary, subject to the limitations as to handler and producer approval, a mandatory duty to establish a marketing program whenever necessary

[49] Section 8c (19) provides for a producer referendum to aid the Secretary in determining the fact of producer approval. The Secretary is also required to terminate an order at the end of any marketing period if he finds that such termination is favored by a majority of producers in number and volume. Section 8c (16) (B).

to the attainment of the statutory policy of maintaining a floor under farm prices.

Although the statute seems to impose a mandatory duty upon the Secretary, this does not necessarily mean that when prices are below parity for any of the commodities covered, he must automatically institute proceedings leading to an order. For he must have "reason to believe" that the order will "tend to effectuate the declared policy" (Section 8c (3)). There may be practical reasons why an order will not be useful even though prices are below parity. In particular, if an order is not likely to receive the substantial producer and handler approval required, he could not have reason to believe that it would effectuate the statutory policy. Since the support of the persons to be regulated is necessary both in order to facilitate enforcement and to satisfy the statutory requirements, the Secretary does not indulge in the futile practice of initiating programs whenever statistics reveal prices to be below parity, but only when a request for assistance comes from a substantial number of producers. Experience has demonstrated that if producers desire a program, they will ask for it; if they do not, they will not approve it. There is also the possibility that the Secretary may find that a state program was satisfactorily achieving the policy of the federal Act, and that for that reason a federal order would not further effectuate

that policy. If producer but not handler approval were available, a state program might stand if the Secretary found that because of it a federal order was not "the only practical means" of advancing the producers' interests.

These reasonable qualifications are entirely consistent with a congressional intention that a program should be established whenever it will aid in bringing prices up to parity, if the producers concerned approve. Such an intention is, on the whole, not compatible with the view that state programs (unless found by the Secretary to be consistent with the federal policy) may operate in the same field.

3. *The effect of the provisions relating to producer approval*

The field in which a state may, consistently with the intention of Congress, establish a marketing program not approved by the Secretary for a product subject to the federal act thus seems to be limited to situations in which the price is below parity and a federal program is not approved or desired by the requisite percentage of producers. This leads to a consideration of the effect of the state statute upon the operation of the producer approval provisions of the federal act."

No program under the Agricultural Marketing Agreement Act can become effective unless the

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" Section 8c (8), (9), (16) (B), (19), *supra*, pp. 37–38.

Secretary determines that it is approved by two-thirds of the producers, by number or volume. Under the California law (Section 16) a program must receive the assent of 65 percent of the producers by number and 51 percent by volume.

In the absence of any state proration statute or program the question before the producers when a federal program is submitted to them is whether or not they favor a restrictive regulation the purpose and probable effect of which would be to increase the prices they will receive. If they think the program will be of benefit to them, they will approve the imposition of the restrictions. This, we believe, was the issue which Congress intended the producers to determine.

Entirely different considerations will guide the producers voting on a federal order if a competing state program is in the picture. They will not then be concerned merely with whether there should be an unregulated market or a federal order, the question which Congress intended to submit to them. If a state program is in effect, a producer would not favor the issuance of a federal order unless for some reason he preferred federal to state regulation. In such circumstances a federal program could not become effective unless it was sufficiently more attractive or appealing than a state program to secure the approval of two-thirds of the producers.

There are, of course, many reasons why farmers in a state might prefer state to federal regula-

tion. They might prefer to be regulated by persons whose tenure of office is subject to local suffrage, or, perhaps, whom they know. They might think that such persons or a local government might be more amenable to their wishes. They might think that such persons, operating under a statute less concerned with the consumer, might permit the program to operate more to the advantage of the farmer, without regard for the consumers, *particularly if the latter were located mainly in other states.* They might feel that the provisions of the state statutes would allow the establishment of higher prices than the federal. The issue upon which they would vote, accordingly, would not be regulation or no regulation, but federal regulation, state regulation, or no regulation.

The federal order would not secure approval unless it outbid the state program for the farmer's support. We believe that this was not what Congress contemplated when the provision for producer approval was included in the federal statute. It was not intended that farmers indicate their choice between a plan prepared by the Secretary pursuant to the policy of the federal law and a competing state program which might promise the farmers more at the expense of the consumers.

The very existence of a state program thus would interfere with the expression of producer approval contemplated in the Agricultural

Marketing Agreement Act. A state program would impede and obstruct the operation of the federal statute since a federal order would need to overcome an additional and substantial obstacle before obtaining the producer approval required. For orders which farmers would otherwise have favored would not become operative unless they promised more than the state program. This in itself would tend to impair the effectiveness of and prevent the effectuation of the policies of Congress.

4. *Cooperation between the Secretary of Agriculture and the states*

The only provision in the Agricultural Marketing Agreement Act which relates to possible state action is Section 10 (i), which reads as follows:

> The Secretary of Agriculture upon the request of the duly constituted authorities of any State is directed, in order to effectuate the declared policy of this title and in order to obtain uniformity in the formulation, administration, and enforcement of Federal and State programs relating to the regulation of the handling of agricultural commodities or products thereof, to confer with and hold joint hearings with the duly constituted authorities of any State, and is authorized to cooperate with such authorities; to accept and utilize, with the consent of the State, such State and local officers and employees as may be necessary; to

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avail himself of the records and facilities of such authorities; to issue orders (subject to the provisions of section 8c) complementary to orders or other regulations issued by such authorities; and to make available to such State authorities the records and facilities of the Department of Agriculture: *Provided,* That information furnished to the Secretary of Agriculture pursuant to section 8d (1) hereof shall be made available only to the extent that such information is relevant to transactions within the regulatory jurisdiction of such authorities, and then only upon a written agreement by such authorities that the information so furnished shall be kept confidential by them in a manner similar to that required of Federal officers and employees under the provisions of section 8d (2) hereof.

This section, of course, contemplates that there may be some state marketing orders. The references to "uniformity in the formulation, administration, and enforcement of federal and state programs" and to "complementary" federal orders show that Congress had in mind state programs regulating intrastate transactions paralleling federal orders regulating interstate. Such an arrangement was entered into for regulating the marketing of milk in the New York milkshed. See *United States* v. *Rock Royal Co-operative, Inc.*, 307 U. S. 533, 548.

The Committee reports state (H. Rep. No. 1241, 74th Cong., 1st Sess., pp. 22–23; S. Rep. No. 1011, 74th Cong., 1st Sess., p. 15):

> This authorization is to carry out the declared policy of the title and looks to securing voluntary uniformity in the formulation, administration, and enforcement of State and Federal programs relating to the regulation of the production, handling, marketing, and sale of agricultural commodities and their products.
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> * * * * * *
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> Notwithstanding the authorization of cooperation contained in this section, there is nothing in it to permit or require the Federal Government to invade the field of the States, for the limitations of the act and the Constitution forbid Federal regulation in that field, and this provision does not indicate the contrary. Nor is there anything in the provision to force States to cooperate. Each sovereignty operates in its own sphere but can exert its authority in conformity rather than in conflict with that of the other.

This language, and in particular the reference to each sovereignty operating "in its own sphere", appears to assume that in this field the powers of state and nation are exclusive rather than concurrent. Whether or not this assumption is correct,[45] it manifests an understanding that Con-

[45] *Milk Control Board* v. *Eisenberg Farm Products Co.*, 306 U. S. 346, decided in 1939, upheld the power of a state to

gress was exclusively occupying the field constitutionally open to it and permitting the states to regulate other intrastate transactions. Cf. *Parker* v. *Motor Boat Sales, Inc.*, 314 U. S. 244; *Illinois Natural Gas Co. V. Central Illinois Pub. Serv. Co.*, 314 U. S. 498, 508. Congress was not enlarging the states' jurisdiction by authorizing them to regulate subjects which would otherwise have fallen within the exclusive federal domain. Nor is there any reason to believe that Section 10 (i) was intended to give the states independent power to regulate the very transactions which Sections 8b and 8c were placing within the Secretary's control.

5. *The Commodity Credit Corporation Loan Agreement*

The approval given by the Department of Agriculture to the state program was embodied in the loan agreement between the state and the Commodity Credit Corporation. Section 302 of the Agricultural Adjustment Act of 1938 (52 Stat. 43, 7 U. S. C., Sec. 1302 (a)) provides that:

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fix interstate milk prices where only a local situation was intended to be controlled; no point was raised as to the relationship of the state law to federal agricultural legislation. The states presumably also have power (in the absence of a federal program) over such intrastate transactions as were held subject to federal regulation in *United States* v. *Wrightwood Dairy Co.*, 315 U. S. 110. We think a different rule may be applicable where a state seeks to control the entire supply and price structure of a commodity distributed interstate throughout the nation. See Point III, p. 71, *infra*.

> The Commodity Credit Corporation is authorized, upon recommendation of the Secretary and with the approval of the President, to make available loans on agricultural commodities (including dairy products). Except as otherwise provided in this section, the amount, terms, and conditions of such loans shall be fixed by the Secretary, subject to the approval of the Corporation and the President.

At the time this case arose the succeeding subsections provided that the corporation should make nonrecourse loans to certain producers of wheat, cotton, and corn at specified proportions of the parity price.[46] As to other agricultural commodities the Corporation has made loans when such action would tend, in its opinion, to carry out the policies of substantive federal agricultural legislation."[47]

This section authorizes the Corporation to make loans on agricultural commodities upon the recommendation of the Secretary of Agriculture and the approval of the President. Since there

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[46] These provisions were changed by Paragraph 10 of the Joint Resolution of May 26, 1941, 55 Stat. 203, 7 U. S. C. (Supp. I), Sec. 1340 (10), so as to require loans at 85% of parity to cooperating producers of cotton, corn, wheat, rice, and tobacco. For other recent legislation see 55 Stat. 498, 15 U. S. C. (Supp. I), Sec. 713a-8.

[47] The Commodity Credit Corporation was originally established by Executive Order No. 6340, Oct. 16, 1933. Its existence and functions "including the making of loans on agricultural commodities" were subsequently ratified by Con-

was a surplus of raisins and since raisin prices were below parity, it was not inappropriate and was entirely lawful under this section for the Corporation to use its resources to lend money to the raisin industry. And the power of the Secretary to fix the terms and conditions of such loans authorized him to impose conditions which would carry out the policy of the Act and at the same time protect the Corporation's investment.

As has been shown, the loans were conditional on the adoption by the state committee of the seasonal marketing program here in issue, subject to the control of prices and sales policies by a committee appointed by the Secretary. The purpose of requiring a restrictive marketing program was to assure the Corporation that a surplus overhanging the market would not unduly depress prices and also not prevent the raisins held as security from being sold at prices high enough to pay off the loan. The reason for subjecting the sales price to federal approval was to see that the price received was both consistent with the federal statutory policy and high enough to repay the loan, but not so high as to prevent the total

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gress. 49 Stat. 4, 52 Stat. 107, 15 U. S. C. sec. 713–713a–7. None of these provisions are as specific in their grant of authority as Section 302(a) of the Agricultural Adjustment Act, quoted in the text. The Act of July 1, 1941, 55 Stat. 498, 15 U. S. C. (Supp. I) sec. 713a–8, enacted after approval of the raisin program here involved, comes under the heading of emergency legislation and would not seem to be applicable to this case.

quantity of raisins taken as security from being sold. See pp. 18–20, *supra*. These provisions were therefore appropriate means of safeguarding the loan and effectuating the policy of the federal Act."

Although Section 302 (a) does not in terms require that loans be made only in order to effectuate the policy of substantive agricultural legislation, the section has been so construed by the Department of Agriculture. This construction is certainly a reasonable one. The section is a part of the Agricultural Adjustment Act of 1938, the regulatory provisions of which applied to cotton, wheat, corn, tobacco, and rice, and Section 2 declared it to be the policy of Congress to achieve the statutory objectives through loans, *inter alia*." The objects of the Agricultural Mar-

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" This does not mean that the state program was consistent with the Sherman Act, or that Sec. 302 (a) authorized the approval of programs unlawful under that statute. See pp. 66–70, *infra*.

" Section 2 of the Agricultural Adjustment Act of 1938 states that—

> "It is hereby declared to be the policy of Congress * * * to regulate interstate and foreign commerce in cotton, wheat, corn, tobacco, and rice to the extent necessary to provide an orderly, adequate, and balanced flow of such commodities in interstate and foreign commerce through storage of reserve supplies, loans, marketing quotas, assisting farmers to obtain, insofar as practicable, parity prices for such commodities, and parity of income, and assisting consumers to obtain an adequate and steady supply of such commodities at fair prices." (7 U. S. C., Sec. 1282, February 16, 1938, 52 Stat. 31.)

keting Agreement Act of 1937 (see pp. 28–29, *supra*), which was derived from the predecessor of the Agricultural Adjustment Act, and which deals mainly with fruits, vegetables, and milk, are fundamentally the same. Accordingly, conditions imposed in a loan agreement should be treated not only as legitimate means of protecting the loan from a financial point of view but also as an expression of opinion by the Department of Agriculture that the agreement is consistent with the substantive policies of the Agricultural Adjustment and Agricultural Marketing Agreement Acts. That this was true in this case is confirmed by the fact that federal officials collaborated in the drafting of the 1940 state raisin program and, as representatives of the Department of Agriculture in its capacity as pledgee, were permitted to control its marketing policies. These manifestations of approval of the state program by the very persons charged with the administration of the federal agricultural marketing policy are sufficient, in our opinion, to show that the program here involved was not in any way inconsistent with the Agricultural Marketing Agreement Act.

This does not mean that the state program is to be regarded as *authorized* under the federal statute. To determine that question the relationship between the Marketing Agreement Act and the Sherman Act must be examined, and the one construed in the light of the other. See pp. 66–70, *infra*.

Although our final conclusion is that the 1940 California Raisin Program is not invalidated by federal agricultural legislation, looked at as a whole and in the light of what was done under it, we have stressed the difficulties which would have arisen in the absence of the Secretary of Agriculture's manifestation of approval. This emphasis might seem undue if this were the only state program or the only case, but the existence of other programs, one of which will shortly be before this Court,[30] made it advisable to give the Court a full discussion at this time. A state program applicable to the entire supply of a commodity distributed in interstate commerce would, in our opinion, be invalid in the absence of the Secretary's approval.

In short, our position is that a state program not sanctioned or approved by the Department of Agriculture would stand "as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines* v. *Davidowitz*, 312 U. S. 52, 67, *supra*, p. 28. But where, as here, a state program is prepared and administered with the active collaboration of the Department of Agriculture, no such objection can be raised. In such circumstances it must be

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[30] *Agricultural Prorate Commission* v. *Mutual Orange Distributors*, appeal pending, No. 288, involving the validity of the California Lemon Prorate Program. The State Lemon Program was never approved, sanctioned, or supported by the Department of Agriculture.

assumed that the state program aided in accomplishing the policies of the federal statute rather than the contrary.

II

The Raisin Marketing Program and the Sherman Act

Although the states may enact certain types of statutes which affect interstate commerce (see pp. 71–90, *infra*), it is, of course, established that where Congress has entered the field all inconsistent state legislation is superseded. *Illinois Natural Gas Co.* v. *Central Illinois Pub. Serv. Co.*, 314 U. S. 498, 510; *Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148, 156. This is true both when there is direct and positive conflict between the statutes (e. g., *Illinois Natural Gas Co.* v. *Central Illinois Pub. Serv. Co.*, *supra*), and also when the state statute, although not in express conflict with any provision of the federal law, nevertheless "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines* v. *Davidowitz*, 312 U. S. 52, 67. In these circumstances "the entire scheme" of the federal statute must be considered to determine whether its operation would be "frustrated" and its provisions "refused their natural effect" if the state law were permitted to stand. *Savage* v. *Jones*, 225 U. S. 501, 533. See pp. 27–28, *supra*.

In determining in the present case whether the California raisin-marketing program is rendered invalid by the prior action of Congress in passing the Sherman Act, three questions seem to require consideration:

(1) Whether the program conflicts with the policy laid down in the Sherman Act for the regulation of interstate and foreign commerce.

(2) Whether state laws, otherwise valid, can stand if inconsistent with the Sherman Act.

(3) Whether any subsequent federal legislation or action taken thereunder can be construed as exempting the raisin marketing program from the prohibitions of the Sherman Act.

A. THE RAISIN MARKETING PROGRAM IS INCONSISTENT WITH THE POLICY EMBODIED IN THE SHERMAN ACT

Section 1 of the Sherman Act prohibits every contract, combination, or conspiracy "in restraint of" interstate or foreign commerce. Section 2 makes it unlawful to monopolize or to attempt to monopolize "any part" [51] of such commerce.

The general scope and purposes of these provisions are well known. "Under the Sherman

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[51] "The commerce referred to by the words 'any part' * * * has both a geographical and a distributive significance, that is it includes any portion of the United States and any one of the classes of things forming a part of interstate and foreign commerce." *Standard Oil Co.* v. *United States*, 221 U. S. 1, 61.

Act 'competition not combination, should be the law of trade.'" *Fashion Originators' Guild* v. *Federal Trade Commission*, 312 U. S. 457, 465. "The end sought was the prevention of restraints to free competition in business and commercial transactions which tended to restrict production, raise prices or otherwise control the market to the detriment of purchasers or consumers of goods and services * * *." *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 493.

1. The raisin marketing program conflicts with the prohibition against monopolizing and attempting to monopolize interstate and foreign commerce laid down in Section 2. The producing area to which the program applied was practically the sole source of supply for the entire country (*supra*, p. 4). The program provided for control over the marketing of all raisins produced within this area. All of these raisins (except the so-called "free tonnage" which constituted 30% of those which the Committee graded as "standard raisins") were required to be delivered to the inferior raisin, surplus, or stabilization pools operated by a program committee composed of producers.[11] The marketing of these raisins was centralized in the committee. Raisins in the two former pools were not permitted to be marketed for consumption as raisins; they

[11] The committee is appointed by the State Director of Agriculture and its activities are subject to his approval. California Agricultural Prorate Act, Sections 15, 22. See pp. 7–31, *supra*.

could be sold only for "assured by-product" purposes. Raisins in the stabilization pool could be marketed only subject to price-maintenance and price-fixing restraints (see pp. 8–9, *supra*). As to the remaining raisins, the so-called "free tonnage," they were forbidden entry into commercial channels of trade unless accompanied by a secondary certificate, which the Committee issued to the producer "when he has satisfied the pool requirements and upon payment of the certificate fee of $2.50 per ton" (R. 19).

There could hardly be, we submit, a clearer case of monopolization of interstate and foreign commerce than exercise of control over the marketing of the nation's entire supply of a commodity. Yet this is precisely what the raisin marketing program was designed to accomplish.

2. Since the program had the purpose and effect of limiting the supply of raisins entering and moving in interstate and foreign commerce and of raising and stabilizing the price of raisins in such commerce, it also is inconsistent with the prohibition against restraints of trade contained in Section 1 of the Sherman Act.

The trade in raisins marketed for consumption as such constitutes a separate and distinct class of trade from trade in raisins marketed for use in the manufacture of by-products, such as wine. We have previously pointed out that, as to the former trade, the raisins in both the surplus pool (20% of

the standard raisins) and inferior raisin pool were prohibited entry into interstate or foreign commerce. A combination "to restrain or control the supply [of a commodity] entering and moving in interstate commerce * * * is a direct violation of the Anti-Trust Act." *Coronado Coal Co.* v. *United Mine Workers*, 268 U. S. 295, 310.

Furthermore, the object of the entire program was to stabilize the price of raisins. To this end the raisins in surplus and inferior raisin pools were not to be sold into "normal marketing channels" (Art. V, Sec. 4; Art. IV, Sec. 4) and raisins in the stabilization pool were to be sold "in such manner as to maintain stability in the market and dispose of such raisins," but in any event (except where required by loan arrangements with the federal government) not at less than the "prevailing market price" (Art. VI, Sec. 4).

That the Sherman Act condemns this kind of a price-fixing arrangement is settled beyond dispute. This Court has recently declared that it has for over forty years consistently "adhered to the principle that price-fixing agreements are unlawful *per se* under the Sherman Act and that no showing of so-called competitive abuses or evils which those agreements were designed to eliminate or alleviate may be interposed as a defense." *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, 218. Prices are fixed within the meaning of this principle "if by various formulae they are

related to the market prices" (*id.*, p. 222). A combination formed for the purpose and with the effect of "pegging, or stabilizing the price of a commodity in interstate or foreign commerce is illegal *per se*" (*id.*, p. 223). The Act places beyond the pale any "combination which tampers with price structures" even though "the members of the price-fixing group were in no position to control the market" (*id.*, p. 221).

Although a system of price fixing may be invalid even in the absence of such a showing (*ibid.*), there can be no doubt that the plan involved in this case controls the market price. This would seem apparent, in view of the proportion of the supply controlled by the committee and its power to keep such supplies off the market until satisfactory prices were offered. The record shows that in the late summer of 1940, prior to announcement of the program, the market price for raisins sold by producers to packers was $45 a ton; after September 7, 1940, when the program went into effect, this price became $55 a ton, a price increase of 22%. See pp. 9–10, *supra*. By August of 1941 every pound of raisins delivered into the surplus and stabilization pools had been disposed of at an average price of $60.51 per ton.[53]

3. Since 90 to 95% of California raisins move in interstate commerce, and since California produces substantially all of the raisins consumed in

[53] See appellants' brief, p. 16.

this country, the above restraints clearly relate to interstate commerce within the meaning of the Sherman Act. This would be so, irrespective of whether the sales by growers to packers were themselves interstate. See pp. 83–85, *infra*. For the limitation upon the total supply and the prices paid by the packers would undoubtedly directly affect and restrain the supply and price of the raisins in interstate commerce. As this Court said in *Local 167* v. *United States*, 291 U. S. 293, 297:

> But we need not decide when interstate commerce ends and that which is intrastate begins. The control of the handling, the sales and the prices at the place of origin before the interstate journey begins or in the State of destination where the interstate movement ends may operate directly to restrain and monopolize interstate commerce. *United States* v. *Brims*, 272 U. S. 549. *Coronado Coal Co.* v. *United Mine Workers*, 268 U. S. 295, 310. *United States* v. *Swift & Co.*, 122 Fed. 529, 532–533. Cf. *Swift & Co.* v. *United States*, 196 U. S. 375, 398. The Sherman Act denounces every conspiracy in restraint of trade including those that are to be carried on by acts constituting intrastate transactions. *Bedford Co.* v. *Stone Cutters Assn.*, 274 U. S. 37, 46. *Loewe* v. *Lawlor*, 208 U. S. 274, 301. * * *

See also *United States* v. *Patten*, 226 U. S. 525; *Standard Oil Co. (Indiana)* v. *United States*, 283

U. S. 163, 169; *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469.

B. THE SHERMAN ACT SUPERSEDES STATE LEGISLATION CONFLICTING WITH THE POLICY IT ESTABLISHES

The Sherman Act does not in terms define its scope in so far as it applies to the activities of state governments. But nothing in the Act precludes its application to programs sponsored by the states. Sections 1 and 2 prohibit unlawful conduct by "persons," and the word "person," as defined in Section 7, in some connections at least, may include a state. *Georgia* v. *Evans*, 316 U. S. 159.

But the question we face here is not whether California or its officials have violated the Sherman Act, but whether the state program interferes with the accomplishment of the objectives of the federal statute. A state law may be superseded as conflicting with a federal statute irrespective of whether its administrators are subject to prosecution for violation of the paramount federal enactment.

The Sherman Act was intended to suppress restraints on "commercial competition" in the interstate field. *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 495. The California statute and raisin program, for reasons indicated above, control the supply and price in a manner irreconcilable with that federal policy. Unless sanctioned by state law, the kind of activity carried

on by the Program Committee would plainly have been unlawful.

We have found no decision which explicitly decides whether the Congress which passed the Sherman Act intended to leave to each of the various states freedom to establish regulations in conflict with those prescribed in the Sherman Act, in so far as they related to interstate commerce. But the construction which this Court has placed upon the statute strongly indicates that Congress, in enacting it, did not intend to authorize the states to establish an inconsistent regulatory policy and did not intend to authorize them to exercise their powers in such a way as to limit the scope of the statute's application.

In *Northern Securities Co. v. United States*, 193 U. S. 197, this Court held that an agreement by majority stockholders of two competing interstate railroads to exchange their respective stockholdings for stock of a holding company violated the Sherman Act. The defendants contended that the charge of illegal combination was based upon stock acquisitions which were permitted by the law of the state of incorporation and that therefore the Sherman Act, as it was applied to the defendants, unconstitutionally trenched upon rights conferred by State law. This Court rejected the contention, saying (pp. 345–346):

> No State can, by merely creating a corporation, or in any other mode, project its

> authority into other States, and across the continent, so as to prevent Congress from exerting the power it possesses under the Constitution over interstate and international commerce, or so as to exempt its corporation engaged in interstate commerce from obedience to any rule lawfully established by Congress for such commerce. It cannot be said that any State may give a corporation, created under its laws, authority to restrain interstate or international commerce against the will of the nation as lawfully expressed by Congress. * * *

While the question under consideration was one of constitutionality, the premise upon which the Court's views rest is that, to the extent that federal and state authority might overlap in the abence of action by Congress, with respect to commerce coming within the general purview of the Sherman Act Congress intended the policy for commerce there declared to override any inconsistent state enactment.

The Court has declared that insofar as restraints on commercial competition were concerned "Congress exercised all the power it possessed." *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 495; *Atlantic Cleaners & Dyers* v. *United States*, 286 U. S. 427, 435. Congress, of course, has the power to supersede all state legislation in a field it intends to occupy. Certainly Congress cannot be said to have been exercising all

its powers if the Sherman Act is to be interpreted as impliedly conferring upon the several states authority to withdraw from the prohibitions of the Sherman Act that part of interstate and foreign commerce which they choose to subject to an inconsistent regulation. Not only is such an interpretation wholly without support in the language of the statute, which is broad and general, but it is inconsistent with attainment of the purposes and objectives of the act.

In *Northern Securities Co.* v. *United States*, 193 U. S., at 337, this Court said that Congress in the Sherman Act prescribed "as *a rule* for *interstate and international commerce* * * * that it should not be vexed by combinations, conspiracies or monopolies which restrain commerce by destroying or restricting competition." The "rule" laid down by Congress would be seriously impaired if the statute were construed to permit each state to nullify it insofar as interstate or foreign commerce could constitutionally be subjected to state regulation. To recognize any such limitation upon the scope of the Congressional enactment would be to open the door wide to state action destructive of the salutary principle that competition, not combination, "should be the law of" trade among the states.

These principles would unquestionably be applicable to a state law which authorized private interests to engage in conduct contrary to the Sherman

Act. A state statute permitting, or requiring, dealers in a commodity to combine so as to limit the supply or raise the price of a subject of interstate commerce would clearly be void. The question here is whether a state may itself undertake to control the supply and price of a commodity shipped in interstate commerce or otherwise restrain interstate competition through a mandatory regulation

We believe that, with certain qualifications set out below, the Sherman Act was intended to maintain a competitive economic system free from interference from any source. Although it was primarily directed at private monopolies and trusts, the language and policy of the Act is not limited to such restraints. If labor organizations, for example, seek to restrain commercial competition, their acts may be unlawful. *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 501. Although the question is more difficult, the statute, in our opinion, likewise protects interstate commerce against restraints upon commercial competition imposed pursuant to the mandate of state law.

This does not mean that every restriction upon interstate trade imposed by state law contravenes the Sherman Act. It seems clear that Congress, when it enacted the statute, did not intend to deprive the states of their normal "police"[56] powers over business and industry. Thus a state

[56] As to the meaning of "police," see p. 78, *infra*.

conservation law would not be deemed to violate the policy of the Sherman Act (cf. *Champlin Refining Co.* v. *Corporation Commission*, 286 U. S. 210), although a private agreement limiting production of a commodity marketed in interstate commerce would probably be unlawful even if entered into for conservation purposes. Accordingly, in determining the restraints and monopolies to which the statute applies, the standard applicable to state action may differ from that governing private conduct.[*] For example, in the field of public utilities, a state can undoubtedly regulate rates without running afoul of the Sherman Act notwithstanding the fact that the rate regulation may embrace interstate commerce (*Pennsylvania Gas Company* v. *Public Service Commission*, 252 U. S. 23). Likewise there is no necessary inconsistency with the policy of the Sherman Act if a state, in fixing prices on a local scale, subjects some interstate sales to price-fixing (*Milk Control Board* v. *Eisenberg Farm Products Co.*, 306 U. S. 346), although the fixing of prices by private agreement for even a small amount of interstate commerce would violate the law.

Although Congress plainly did not regard local laws in these fields as incompatible with the Sher-

[*] This differentiation may be justified on the basis of the "rule of reason," or, more appropriately, on the basis of the intention of Congress, from which the "rule of reason" itself was derived. *Standard Oil Co.* v. *United States*, 221 U. S. 1.

man Act, we believe that the same cannot be said when the state statute is *designed* directly to control the competitive aspects of an industry in a manner which will have more than local effect. A state legislative program eliminating competition on such a scale is irreconcilable with the very essence of the Sherman Act, the preservation of commercial competition in interstate industries.

The present case, in our view, falls within the latter category, for the California raisin program controls the supply and price of raisins throughout the nation. Where the line should be drawn short of such a situation need not, of course, be determined in this case.

Of all the enactments by Congress under the commerce power, the Sherman Act is the most general in its application and is the only statute of its kind which has stood unchanged as to its basic provisions for over 50 years. The freedom of trade which it is designed to promote is closely analogous to the freedom of trade among the states which the commerce power itself is intended to preserve. Indeed this Court has said that "as a charter of freedom, the Act has a generality and adaptability comparable to that found to be desirable in constitutional provisions." *Appalachian Coals, Inc.* v. *United States*, 288 U. S. 344, 359-360. It is to be noted that the test which we have suggested for determin-

ing the compatibility of state laws with the Sherman Act is very similar to that which this Court has invoked when the question is whether a state statute conflicts with the commerce clause in the absence of federal legislation. See pp. 71–90 *infra*. The Sherman Act may thus be regarded as a Congressional affirmation of the constitutional doctrine that national interstate commercial interests are not to be subjected to restrictive state legislation.

C. THE LOAN AGREEMENT APPROVED BY THE DEPARTMENT OF AGRICULTURE DID NOT EXEMPT THE STATE PROGRAM FROM THE ANTITRUST LAWS

If it be assumed that the California raisin program would otherwise be contrary to the policy of the Sherman Act and therefore invalid, the question still remains as to whether the approval manifested by the Department of Agriculture has the effect of exempting the program from the antitrust laws.

We take it as established that conduct otherwise in violation of the Sherman Act does not become exempt because of approval by Government officials unless Congress, expressly or by necessary implication, has manifested its intention that conduct so approved shall be lawful. *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, 225, 227.

The Agricultural Marketing Agreement Act of 1937 "itself expressly defines the extent to which its provisions make the antitrust laws inapplicable." *United States v. Borden Co.*, 308 U. S. 188, 200. Section 8b, after authorizing the Secretary of Agriculture to enter into marketing agreements with processors, producers, and others engaged in the handling of any agricultural commodity, provides—

> The making of any such agreement shall not be held to be in violation of any of the antitrust laws of the United States * * *.

Section 3,[56] after providing for mediation or arbitration of certain disputes between cooperatives composed of milk producers and purchasers or distributors of milk and for awards or agreements resulting from arbitration or mediation, provides in subsection (d)—

> No meeting so held, and no award or agreement so approved shall be deemed to be in violation of any of the antitrust laws of the United States.

Section 8c, which authorizes the Secretary to issue orders, contains no express exemption, but it is, of course, clear that Congress did not intend the issuance of or compliance with such orders to be in violation of the antitrust laws.[57]

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[56] This section, as amended by the 1937 act, appears on pp. 18-19 of the pamphlet attached as Appendix A.

[57] There is also a reference to such an exemption in Section 8d (1). The section authorizes the Secretary to obtain

"These explicit provisions requiring official participation and authorization show beyond question how far Congress intended that the Agricultural Act should operate to render the Sherman Act inapplicable. If Congress had desired to grant any further immunity, Congress doubtless would have said so.

"An agreement made with the Secretary as a party, or an order made by him, or an arbitration award or agreement approved by him, pursuant to the authority conferred by the Agricultural Act and within the terms of the described immunity, would of course be a defense to a prosecution under the Sherman Act to the extent that the prosecution sought to penalize what was thus validly agreed upon or directed by the Secretary. Further than that the Agricultural Act does not go." *United States* v. *Borden Co.*, 308 U. S. 188, 201–202.

Obviously the raisin marketing program does not fall within the specific exemptions in Sections 8b and 3 or within the purview of Section 8c. Nor can Section 10 (i) be regarded as authorizing approval of a program such as this, since it clearly relates only to uniform and complementary federal and state activity. (See pp. 43–46, *supra*.)

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from all parties to any marketing agreement and from all handlers subject to an order such information as he finds to be necessary to determine, among other things, "whether or not there has been any abuse of the privilege of exemptions from the antitrust laws."

The federal approval of the state program appears in the loan agreement made by the Commodity Credit Corporation. This agreement finds its statutory basis in Section 302 (a) of the Agricultural Adjustment Act of 1933, considered *supra*, pp. 46–50. We have indicated our view that under this section the Department of Agriculture is authorized to condition its loans on terms which will tend to effectuate the policy of federal agricultural legislation, and that conditions so imposed by the Department are to be regarded as consistent with the policy of such legislation. The loan agreement may thus have been authorized, if only agricultural legislation is considered apart from the Sherman Act. It is to be assumed that the Sherman Act was not in the minds of the persons who approved the terms of the California loan agreement. But the question of the effect of the agreement in granting an exemption from the Sherman Act has now been raised, and we are compelled to conclude that the power to fix the terms and conditions of such loans was not intended to authorize the granting of immunity from the Sherman Act.

Nothing in Section 302 itself suggests that Congress was intending to permit the granting of immunity from the Sherman Act. There is no express exempting clause, and the subject of the section does not, as does Section 8c of the Agri-

cultural Marketing Agreement Act, necessarily imply that the provisions of the Sherman Act are to be waived. Indeed, the section merely authorizes the making of loans, and there seems to be ample scope for its operation without permitting the granting of exemptions from the antitrust laws. Accordingly, we do not think that it should be construed as a provision containing authority to exempt from the Sherman Act.

We assume that it would not be suggested that the Commodity Credit Corporation, acting under Section 302 (a), could exempt borrowers from the necessity of complying with the National Labor Relations Act, the Fair Labor Standards Act, or the Pure Food Laws, for example, through the device of incorporating inconsistent provisions in loan agreements, even if such provisions could be shown to be reasonable means of maintaining farm prices at parity or of improving the borrower's financial condition and thereby protecting the loan. We see no reason why the Sherman Act should fall in a different, less favored category.

It may be argued that Section 302 (a) is intended to permit loans which will effectuate the policies of the Agricultural Adjustment Act and the Agricultural Marketing Agreement Act, and that these statutes are not entirely consistent in their philosophy with the Sherman Act. But it does not follow that loans cannot be made without

the granting of exemptions from the antitrust laws. This case, of course, raises only the question of the effect of a Commodity Credit loan agreement in exempting from the Sherman Act private combinations or state regulations which would otherwise be unlawful. We think that the approval in such agreements of such state or private programs does not grant them any special immunity. No question is presented, however, as to the legality of the activities of the Commodity Credit Corporation or the applicability of the Sherman Act to that agency.

III

The California Raisin Program Is Invalid Under the Commerce Clause Apart From Any Federal Statute

The Court, in ordering reargument, has requested the parties to discuss the validity of the state statute and program as affected by the Sherman Act and federal agricultural legislation, and has asked the Solicitor General to participate in the case as *amicus curiae*. We assume that the Court did not intend to preclude the Solicitor General from stating his views as to the validity of the state act and program apart from federal legislation, and accordingly we are briefing that question in addition to the issues expressly mentioned.

The Court will not, of course, be called upon to determine this question if it decides that the state program interferes with the accomplishment of policies embodied in congressional legislation. Cf. *Hines* v. *Davidowitz*, 312 U. S. 52, 61–62. Nor would the question be presented if the Court were of opinion that Congress had intended to validate state programs approved or controlled by the Department of Agriculture. For since the Constitution places the paramount power over interstate commerce in the Congress, a manifestation of congressional intention will invalidate state laws which would otherwise stand (*Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148, 155) or sanction laws which would otherwise be void (*In re Rahrer*, 140 U. S. 545; *Clark Distilling Co.* v. *Western Md. Ry. Co.*, 242 U. S. 311; *Whitfield* v. *Ohio*, 297 U. S. 431; *Kentucky Whip & Collar Co.* v. *Illinois Central R. Co.*, 299 U. S. 334). Whether the state raisin program contravenes the constitutional provision must therefore be considered on the assumption that Congress has not expressed its intention on the subject one way or the other."[38]

[38] In Points I and II we have indicated our view that the state program is not in conflict with, although not necessarily authorized by, the expression of congressional intention in federal agricultural legislation and that it is contrary to the manifestation of such intention embodied in the Sherman Act.

Although the commerce clause in terms only vests regulatory power in Congress, it has been construed as in itself preventing states from enacting some types of legislation relating to commerce. This interpretation of the clause finds warrant in its historical background of state rivalry and obstruction to commerce.[59] As a consequence, "as this Court has many times decided, the purpose of the commerce clause was not to preclude all state regulation of commerce crossing state lines, but to prevent discrimination and the erection of barriers or obstacles to the free flow of commerce, interstate or foreign." *Di Santo* v. *Pennsylvania*, 273 U. S. 34, 43–44 (Mr. Justice Stone dissenting); *California* v. *Thompson*, 313 U. S. 109; *South Carolina Highway Department* v. *Barnwell Bros.*, 303 U. S. 177, 185–186. Although the fathers of the Constitution may not specifically have foreseen the problem as to the validity of state regulation in the silence of Congress,[60] it was entirely proper for the Court to construe the Constitution in the light of these purposes and objectives.

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[59] See *Gibbons* v. *Ogden*, 9 Wheat. 1, 224–225 (concurring opinion of Johnson, J.); The Federalist, Nos. 7, 11, 42; Story on *the Constitution*, § 259; Farrand, *The Framing of the Constitution*, pp. 5–10 (1913); *South Carolina Highway Department* v. *Barnwell Bros.*, 303 U. S. 177, 186, and authorities cited.

[60] See Warren, *Making of the Constitution*, 570 (1928).

Although there has been a diversity of opinion as to what formula most aptly drew the line between permissible and invalid state legislation and as to the application of the various formulas to the facts of particular cases, there has been substantial agreement for at least 90 years that some types of state laws were invalidated by the commerce clause itself in the absence of a showing of congressional intention. Since *Cooley* v. *Board of Port Wardens*, 12 How. 299, 319, the Court has consistently adhered to the principle that:

> Whatever subjects of this power *are in their nature national*, or admit only of one uniform system, or plan of regulation, may justly be said to be of such a nature as to require exclusive legislation by Congress. [Italics supplied.]

Some cases, though without abandoning this test, have spoken in terms of "direct" or "indirect" burdens on commerce.[81] Others have emphasized the implied intention of Congress. If the subject was "national," Congress was presumed to intend that there be no state regulation without express congressional consent, while if the subject was "local" Congress was presumed to assent to the existence of state legislation until the con-

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[81] E. g. *Shafer* v. *Farmers Grain Co.*, 268 U. S. 189; *Bayside Fish Co.* v. *Gentry*, 297 U. S. 422; *Foster-Fountain Packing Co.* v. *Haydel*, 278 U. S. 1; *Public Utilities Commission* v. *Attleboro Co.*, 273 U. S. 83.

trary appeared.[62] Whatever the phraseology employed, we believe that in substance the Court was intending to apply the basic principle of the *Cooley* case. As the Court, speaking through Mr. Justice Hughes, declared in *The Minnesota Rate Cases*, 230 U. S. 352, 400:

> The principle, which determines this classification, underlies the doctrine that the States cannot under any guise impose direct burdens upon interstate commerce. For this is but to hold that the States are not permitted directly to regulate or restrain that which from its nature should be under the control of the one authority and be free from restriction save as it is governed in the manner that the national legislature constitutionally ordains.

See to the same effect *Minnesota* v. *Blasius*, 290 U. S. 1, 8; *Port Richmond Ferry Co.* v. *Hudson County*, 234 U. S. 317, 330.

Recent decisions applying this test, which we think is plainly the most consistent with the basic objectives of the commerce clause, have emphasized that "whatever subjects are in their nature national" are subject to exclusive federal control,

[62] *Graves* v. *O'Keefe*, 306 U. S. 466, 479 n. and cases cited; *Welton* v. *Missouri*, 91 U. S. 275, 282; *County of Mobile* v. *Kimball*, 102 U. S. 691, 697; cf. *Leisy* v. *Hardin*, 135 U. S. 100, 124; *In re Rahrer*, 140 U. S. 545. For an exposition of this theory see Dowling, *Interstate Commerce and State Power*, 27 Va. L. Rev. 1 (1940).

while local matters, even though interstate, may be regulated by the states. Thus in *California* v. *Thompson,* 313 U. S. 109, 113, the Court said:

> As this Court has often had occasion to point out, the Commerce Clause, in conferring on Congress power to regulate commerce, did not wholly withdraw from the states the power to regulate matters of *local concern* with respect to which Congress has not exercised its power, even though the regulation affects interstate commerce. Ever since *Willson* v. *Black Bird Creek Marsh Co.,* 2 Pet. 245, and *Cooley* v. *Board of Port Wardens,* 12 How. 299, it has been recognized that there are matters *of local concern,* the regulation of which unavoidably involves some regulation of interstate commerce, but which because of *their local character and their number and diversity* may never be adequately dealt with by Congress. *Because of their local character,* also, there is wide scope for local regulation without impairing the uniformity of control of the national commerce *in matters of national concern* and without materially obstructing the free flow of commerce which were the principal objects sought to be secured by the Commerce Clause. * * * [Italics supplied.]

And the differentiation between matters of national importance and those of local concern was

reiterated at the last term in *Duckworth* v. *Arkansas*, 314 U. S. 390, 394, where the Court declared:

> While the commerce clause has been interpreted *as reserving to Congress the power to regulate interstate commerce in matters of national importance*, that has never been deemed to exclude the states from regulating matters primarily of local concern with respect to which Congress has not exercised its power, even though the regulation has some effect on interstate commerce. * * * [Italics supplied.]

See to the same effect *The Minnesota Rate Cases*, 230 U. S. 352, 398–412, which contains an analysis of the doctrine and a detailed review of the earlier cases; *South Carolina Highway Department* v. *Barnwell Bros., supra; Edwards* v. *California*, 314 U. S. 160, 172; Dowling, *Interstate Commerce and State Power*, 27 Va. L. Rev. 1 (1940); Sholley, *The Negative Implications of the Commerce Clause*, 3 Univ. of Chicago L. Rev. 556 (1936), 3 Selected Essays on Constitutional Law 933 (Assn. of American Law Schools 1938).

No mathematical rule, of course, determines what subjects of regulation are of national importance and which are of local concern. It is necessary to take into account "all the facts and circumstances, such as the nature of the regulation, its function, the character of the business

involved and the actual effect on the flow of commerce". (*Di Santo* v. *Pennsylvania*, 273 U. S. 34, 44 (dissent)). In general it may be said that matters which are of limited consequence in a geographic-economic sense (e. g., *Milk Control Board* v. *Eisenberg Farm Products Co.*, 306 U. S. 346; *Port Richmond Ferry Co.* v. *Hudson County*, 234 U. S. 317) and "cases where a State was exercising its historic powers over . . . traditionally local matters" (*Allen-Bradley Local No. 1111* v. *Wisconsin Employment Relations Board*, 315 U. S. 740, 749, and see p. 87, *infra*) have been deemed local. But other matters, not falling in these categories, which are likely to affect the interstate economy on a broader scale or which substantially interfere with interstate movement for a "commercial," as distinct from a "police," purpose,[*] have been regarded as falling within the exclusive national sphere. E. g., *Wabash, St. L. and Pacific Ry.* v. *Illinois*, 118 U. S. 557; *Schollenberger* v. *Pennsylvania*, 171 U. S. 1; *West*

[*] Although we use these terms with some hesitancy in view of the various shades of meaning which they possess, it is felt that they may appropriately be used as convenient symbols for the cases dividing subjects into state and federal fields. The term "police power" is sometimes used to describe only those regulations which relate to the public health, safety, and welfare which have historically been subject to local governmental control (e. g., *Railroad Co.* v. *Husen*, 95 U. S. 465, 470–471); the term also may be used more broadly to mean any legislation within the power of government (e. g., *License Cases*, 5 How. 504, 583 (C. J. Taney)).

v. *Kansas Natural Gas Co.*, 221 U. S. 229; *Lemke* v. *Farmers Grain Co.*, 258 U. S. 50; *Pennsylvania* v. *West Virginia*, 262 U. S. 553; *Buck* v. *Kuykendall*, 267 U. S. 307; *Shafer* v. *Farmers Grain Co.*, 268 U. S. 189; *Sprout* v. *South Bend*, 277 U. S. 163; *Foster-Fountain Packing Co.* v. *Haydel*, 278 U. S. 1.

The Court has also regarded as of great consequence whether or not the burden of a statute fell primarily upon persons outside of the regulating state. Even in the absence of open discrimination, the Court has recognized that "the commerce clause by its own force" similarly prohibits (*South Carolina Highway Department* v. *Barnwell Bros.*, 303 U. S. 177, 185–186) "state legislation nominally of local concern [which] is in point of fact aimed at interstate commerce, or by its necessary operation is a means of gaining a local benefit by throwing the attendant burdens on those without the state. *Robbins* v. *Shelby County Taxing District*, 120 U. S. 489, 498; *Caldwell* v. *North Carolina*, 187 U. S. 622, 626. It was to end these practices that the commerce clause was adopted." As the Court stated in that case (pp. 184–185 n.):

> State regulations affecting interstate commerce, whose purpose or effect is to gain for those within the state an advantage at the expense of those without, or to burden those out of the state without any corresponding advantage to those within, have been thought

> to impinge upon the constitutional prohibition even though Congress has not acted. (Citing cases) * * *.
>
> Underlying the stated rule has been the thought, often expressed in judicial opinion, that when the regulation is of such a character that its burden falls principally upon those without the state, legislative action is not likely to be subjected to those political restraints which are normally exerted on legislation where it affects adversely some interests within the state. * * * *

See also *Edwards* v. *California*, 314 U. S. 160, 174; *McGoldrick* v. *Berwind-White Co.*, 309 U. S. 33, 46 n.; cf. *Helvering* v. *Gerhardt*, 304 U. S. 405, 412; *McCulloch* v. *Maryland*, 4 Wheat. 316, 435–436.

It is unnecessary in this case to look for an all-inclusive definition of those subjects which are national or local. We are of the opinion that if anything is of national commercial importance, the supply and price level of a commodity moving in interstate commerce falls in that category. The California statute and raisin program permit a state agency to monopolize the entire national supply of raisins, to determine the quantity to be shipped in interstate commerce, and to control the interstate price structure. It is expressly contemplated that the State Zone will "stabilize" the market by keeping a substantial portion of the raisin supply out of normal competitive channels, and by preventing the forces of competition from

operating upon the sale of the remainder. Such a program applied to all of a product marketed in interstate commerce is obviously of national concern. And inasmuch as 90 to 95 percent of the raisins covered by the program are sold interstate, the burden of the regulation will fall primarily upon consumers in other states. Since the benefits accrue to the California producers, the action of the state "is not likely to be subjected" to the normal "political restraints" upon legislation whose impact is felt equally by interests within the state. See pp. 79–80, *supra*. In view of these facts and the controlling principles summarized above, we believe that the California raisin program is unconstitutional.

This conclusion is confirmed by numerous decisions holding invalid state regulation of interstate prices, rates, and competition where the effect is not limited to purely local interests. The states may not regulate interstate railroad rates or wholesale gas or electric rates (*Wabash, St. L. & Pac. Ry.* v. *Illinois*, 118 U. S. 557; *Missouri* v. *Kansas Gas Co.*, 265 U. S. 298; *Public Utilities Commission* v. *Attleboro Co.*, 273 U. S. 83), although they may control retail rates, even when interstate, since the latter are regarded as local in character (*Pennsylvania Gas Co.* v. *Public Service Commission*, 252 U. S. 23; *Illinois Natural Gas Co.* v. *Central Illinois Pub. Serv. Co.*, 314 U. S. 498, 505; cf. *Port Richmond Ferry Co.* v. *Hudson*

County, 234 U. S. 317; *Milk Control Board* v. *Eisenberg Farm Products Co.*, 306 U. S. 346). Although the state may fix prices for milk sold interstate in connection with a local milk-control program when only a small proportion of the commodity regulated leaves the state (*Milk Control Board* v. *Eisenberg*, *supra*), a state may not license or control the prices or profits of persons purchasing wheat for interstate shipment when most of the commodity is intended to cross state lines. *Lemke* v. *Farmers Grain Co.*, 258 U. S. 50; *Shafer* v. *Farmers Grain Co.*, 268 U. S. 189; *Grandin Farmers Cooperative Elevator Co.* v. *Langer*, 5 F. Supp. 425 (N. D.), affirmed, 292 U. S. 605.[*] Commerce is certainly no more obstructed through the requirement of a license for buyers than by direct limitation upon the supply of a commodity which may be sold.

Appellants seem to agree (Br. pp. 38, 40) that the test of the validity of a state law affecting commerce is whether the matter regulated is "peculiarly of local concern," but contend that because the raisins are all produced in California and because the transactions regulated are intrastate the program does apply only to local matters. As to the first point, it is precisely because California has a natural monopoly of the raisin

[*] The *Eisenberg* case distinguished the *Lemke* and *Shafer* cases on the ground that they dealt with commerce almost entirely interstate in nature. 306 U. S. at 353.

industry that the regulation has important national effects. When a commodity is produced in several states a single state is in no position to control the national market. In addition, competitive forces will tend to prevent a single state from imposing restrictive regulations on commerce in such a commodity. With respect to a commodity produced only in one state and marketed primarily in other states, a state is subject to neither the customary economic nor the normal internal political restraints. See pp. 79–80, *supra*. The present state program determines the quantity of raisins which may go to market—and the market is the national interstate market. We fail to see how such a regulation can be said to be of purely local concern.

Appellants lay great stress upon the point that the transactions here regulated are intrastate. We do not think that the marketing as a whole can be so described. Moreover, when a state program has so great an effect upon the movement and the price of a commodity in interstate commerce throughout the nation, we feel that it is immaterial whether or not the activities regulated are technically interstate.

Ninety to ninety-five per cent of the raisins are known to be destined for extrastate shipment (R. 16, 154–155). The packers prepare the raisins for market by stemming, cleaning, and packing them, but this preparation takes only a few minutes (R.

107, 130–131; see pp. 5–6, *supra*) and is not comparable to the conversion of raw materials into a different finished product. The raisins are stored for periods ranging from a few days to two years, but many of the smaller packers dispose of their share of the crop in a relatively short time (R. 132–133). There was testimony that (R. 132) "The small packer, with less finances, has to operate his business more or less on a merchandise basis, having the raisins delivered today and shipping them tomorrow." In the ideal situation, when the outgoing truck was available when raisins were brought to the plant, the raisins might be in the plant only five or six minutes (R. 131). The record shows that packers obtain orders from outside the state before the raisins are received from the growers (R. 129, 131–132), and ship many of the raisins promptly in order to fill such advance orders.

Since most of the crop is purchased for eventual interstate shipment, it may well be regarded as in, or in the current of, interstate commerce. In *United States* v. *Rock Royal Co-operative, Inc.*, 307 U. S. 533, 568–569, the Court said in answer to a similar contention:

> The challenge is to the regulation "of the price to be paid upon the sale by a dairy farmer who delivers his milk to some country plant." It is urged that the sale, a local transaction, is fully completed before any interstate commerce begins and that the at-

> tempt to fix the price or other elements of that incident violates the Tenth Amendment. But where commodities are bought for use beyond state lines, the sale is a part of interstate commerce. * * *

See also *Lemke* v. *Farmers Grain Co.*, 258 U. S. 50, in which sales by farmers to grain elevators for subsequent shipment were held to be in interstate commerce.

Even if the sales of raisins to be stored for a long period were intrastate this would not necessarily be true as to those raisins which started on their interstate journey shortly after entering the packing plant. It would, of course, be impossible to segregate for regulatory purposes the raisins shipped in commerce shortly after their receipt by the packers and those stored for a longer period. Cf. *Currin* v. *Wallace*, 306 U. S. 1; *Mulford* v. *Smith*, 307 U. S. 38; *United States* v. *New York Central R. R. Co.*, 272 U. S. 457.

Accordingly we do not believe that the state program can be deemed to be limited to the regulation of intrastate activities. In any event, since all of the raisins shipped in interstate commerce come from California, it makes no difference, in so far as the effect on commerce is concerned, whether the state restricts the available supply by limiting the quantity sold by the growers or that shipped by the packers. For if the growers cannot sell more than an amount permitted by the state, the supply which the packers will have

available for interstate shipment will inevitably be limited to the same extent. Similarly, any increase in the prices paid the growers as a result of the state program will increase the costs of and the prices charged by the packers. For the prices established by the State Zone function as a floor beneath which packers cannot purchase, and this floor will serve as the foundation upon which the packers must compute the prices at which they will resell the raisins in interstate commerce.

When a state law affects "commerce in its national aspect," its validity should not be dependent upon a "mechanical test" for determining when intrastate commerce ends and interstate commerce begins. Cf. *Illinois Natural Gas Co.* v. *Central Illinois Pub. Serv. Co.*, 314 U. S. 498. The Court's remarks in the *Illinois Gas* case are directly in point (314 U. S. 505, 506):

> * * * the Court, in determining the validity of state regulations, has been less concerned to find a point in time and space where the interstate commerce in gas ends and intrastate commerce begins, and has looked to the nature of the state regulation involved, the objective of the state, and the effect of the regulation upon the national interest in the commerce. * * *
>
> In the absence of any controlling act of Congress, we should now be faced wit' the question whether the interest of the state in the present regulation of the sale and

> distribution of gas transported into the state, balanced against the effect of such control on the commerce in its national aspect, is a more reliable touchstone for ascertaining state power than the mechanical distinctions on which appellee relies. * * *

Cloverleaf Butter Co. v. *Patterson*, 315 U. S. 148, and *McDermott* v. *Wisconsin*, 228 U. S. 115, support the above statement that state regulation of intrastate activities which substantially interferes with the national interest in commerce is invalid. The *Cloverleaf* case noted that "the same principles govern state action in this field" of manufacturing (315 U. S. at 156), and the *McDermott* case nullified an interference with federal policy resulting from state control of labels on goods on a retailer's shelves.

The cases in which state regulations have been upheld in the main fall into categories which since the beginning of our government have been regarded as "traditionally local." *Allen-Bradley Local No. 1111* v. *Wisconsin Employment Relations Board*, 315 U. S. 740, 749. Quarantine and other health measures, highway and safety laws, regulations of waterways and local public utilities, conservation and game laws, inspection laws, all relate to matters which, because of their number and diversity, cannot adequately and fully be dealt with by Congress. See *California* v. *Thompson*, 313 U. S. 109, 113; *South Carolina Highway*

Department v. *Barnwell Bros.*, 303 U. S. 177, 185.[85] Ever since *Willson* v. *Black-bird Creek Marsh Co.*, 2 Pet. 245, and *Cooley* v. *Board of Port Wardens*, 12 How. 299, it has been recognized that these are matters of local concern (*ibid.*).

Many cases hold that statutes purporting to deal with these subjects cannot stand if in fact they are designed to interfere with the untrammeled flow of interstate trade from the competitive or commercial viewpoint. *Foster-Fountain Packing Co.* v. *Haydel*, 278 U. S. 1; *Minnesota* v. *Barber*, 136 U. S. 313; *Brimmer* v. *Rebman*, 138 U. S. 78; *Oklahoma* v. *Kansas Natural Gas Co.*, 221 U. S. 229; *Railroad Co.* v. *Husen*, 95 U. S. 465. The limitation upon the power of states to regulate the competitive features of interstate industry is brought out by two cases involving certificates of necessity and convenience for interstate bus lines. In *Buck* v. *Kuykendall*, 267 U. S. 307, the Court held that a state could not deny a certificate to such a company in order to limit interstate competition. In *Bradley* v. *Public Utilities Commission*, 289 U. S. 92, the Court held that such a certificate could be denied in order to avoid the hazards of traffic congestion, the *Buck* case being distinguished on the ground that

[85] The citations are collected in the above cases and in *The Minnesota Rate Cases*, 230 U. S. 352, 398–412.

it did not concern safety but was intended to prevent competition deemed undesirable.

Appellants rely chiefly upon *Sligh* v. *Kirkwood*, 237 U. S. 52; *Champlin Refining Co.* v. *Corporation Commission*, 286 U. S. 210; and *Townsend* v. *Yeomans*, 301 U. S. 441. *Sligh* v. *Kirkwood* sustained a Florida law forbidding the shipment of citrus fruits which were "immature or otherwise unfit for consumption."[66] This measure was plainly an appropriate means of preventing the consumption of impure food, and accordingly fell within the class of health regulations historically left to the states (cf. *Allen-Bradley Local No. 1111* v. *Wisconsin Employment Relations Board*, 315 U. S. 740, 749; *Maurer* v. *Hamilton*, 309 U. S. 598, 614), even though a purpose of the law was also to protect the commercial reputation of Florida fruit. A state quarantine law is nonetheless a health regulation because it prevents diseased food or persons or cattle from leaving a state in the interests of persons residing elsewhere. Moreover, the Florida law did not seek to monopolize or control the total supply and price of a subject of interstate commerce.

The *Champlin* case involved a true conservation law designed to prevent physical waste of

[66] The court below in this case did not enjoin enforcement of the California regulation insofar as it applied to "unwholesome, unsound or inferior raisins" (R. 62).

a vital product. This Court's opinion several times pointed out that the Oklahoma oil proration statute was not intended to control prices or eliminate competition (286 U. S., at 232, 234). Moreover, Oklahoma did not have a monopoly of the national supply. The California agricultural proration statute is directed at control of marketing, not conservation of a natural resource. See pp. 31–32, *supra*. Crops which grow each year do not need to be "conserved" in the same sense as does a wasting asset such as oil, which is definitely limited in quantity.

Townsend v. *Yeomans* sustained a Georgia statute fixing maximum commissions for tobacco warehousemen. The Court pointed out that the subject was one permitting of diversified treatment, and that (301 U. S. at 455):

> The Georgia Act does not attempt to fix the prices at the auction sales or to regulate the activities of the purchasers. The fixing of reasonable maximum charges for the services of the warehousemen in aid of the tobacco growers does not militate against any interest of those who buy. * * *

A law fixing maximum charges for services performed within a state protects the interests of extrastate purchasers and consumers. The Georgia law, of course, gave the state no control over the multi-state tobacco market.

None of these cases are concerned with a statute or program monopolizing the national mar-

ket. Indeed, we know of no case in which a state law or regulation would have had as great an effect upon the national interest in interstate commerce as does the program involved in the case at bar.

CONCLUSION

For the above reasons we conclude (1) that the California Raisin Program is not inconsistent with federal agricultural legislation; (2) that it is in conflict with the Sherman Act; and (3) that, apart from federal legislation, it is invalid under the commerce clause.

Respectfully submitted.

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APPENDIX A

UNITED STATES DEPARTMENT OF AGRICULTURE

DIVISION OF MARKETING AND MARKETING AGREEMENTS

COMPILATION OF AGRICULTURAL MARKETING AGREEMENT ACT OF 1937

REENACTING, AMENDING, AND SUPPLEMENTING THE AGRICULTURAL ADJUSTMENT ACT, AS AMENDED

(Including Amendments of the 76th Congress, 1st Session)

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON: 1939

orderly marketing conditions for agricultural commodities in interstate commerce as will establish[3] prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period; and, in the case of all commodities for which the base period is the pre-war period, August 1909 to July 1914, will also reflect current interest payments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate, as contrasted with such interest payments and tax payments during the base period. The base period in the case of all agricultural commodities except tobacco and potatoes shall be the pre-war period, August 1909–July 1914. In the case of tobacco and potatoes, the base period shall be the postwar period, August 1919–July 1929.

(2) To protect the interest of the consumer by (a) approaching the level of prices which it is declared to be the policy of Congress to establish in subsection (1) of this section by gradual correction of the current level at as rapid a rate as the Secretary of Agriculture deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (b) authorizing no action under this title which has for its purpose the maintenance of prices to farmers above the level which it is declared to be the policy of Congress to establish in subsection (1) of this section.

(c) Section 8a (5), (6), (7), (8), and (9) relating to violations and enforcement;

SEC. 8a(5) Any person willfully exceeding any quota or allotment fixed for him under this title by the Secretary of Agriculture, and any other person knowingly participating, or aiding, in the exceeding of said quota or allotment, shall forfeit to the United States a sum equal to three times the current market value of such excess, which forfeiture shall be recoverable in a civil suit brought in the name of the United States.

(6) The several district courts of the United States are hereby vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating[4] any order, regulation, or agreement, heretofore or hereafter made or issued pursuant to this title, in any proceeding now pending or hereafter brought in said courts.

(7) Upon the request of the Secretary of Agriculture, it shall be the duty of the several district attorneys of the United States, in their respective districts, under the directions of the Attorney General, to institute proceedings to enforce the remedies and to collect the forfeitures provided for in, or pursuant to, this title. Whenever the Secretary, or such officer or employee of the Department of Agriculture as he may designate for the purpose, has reason to believe that any handler has violated, or is violating, the provisions of any order, or amendment thereto issued pursuant to this title, the Secretary shall have power to institute an investigation and, after due notice to such handler, to conduct a hearing in order to deter-

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[3] The italicized words were substituted, by sec. 2 (b) of the Agricultural Marketing Agreement Act of 1937, in lieu of the words: "balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will fee establish".

[4] The following was deleted by section 2 (c) of the Agricultural Marketing Agreement Act of 1937: ", the provisions of this section, or of".

mine the facts for the purpose of referring the matter to the Attorney General for appropriate action.

(8) The remedies provided for in this section shall be in addition to, and not exclusive of, any of the remedies or penalties provided for elsewhere in this title or now or hereafter existing at law or in equity.

(9) The term "person" as used in this title includes an individual, partnership, corporation, association, and any other business unit.

(d) Section 8b (relating to marketing agreements);

SEC. 8b. In order to effectuate the declared policy of this title, the Secretary of Agriculture shall have the power, after due notice and opportunity for hearing, to enter into marketing agreements with processors, producers, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof, only with respect to such handling as is in the current of interstate or foreign commerce or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof. The making of any such agreement shall not be held to be in violation of any of the antitrust laws of the United States, and any such agreement shall be deemed to be lawful: Provided, That no such agreement shall remain in force after the terminations of this Act. For the purpose of carrying out any such agreement the parties thereto shall be eligible for loans from the Reconstruction Finance Corporation under section 5 of the Reconstruction Finance Corporation Act. Such loans shall not be in excess of such amounts as may be authorized by the agreements.

(e) Section 8c (relating to orders);

ORDERS

SEC. 8c. (1) The Secretary of Agriculture shall, subject to the provisions of this section, issue, and from time to time amend, orders applicable to processors, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof specified in subsection (2) of this section. Such persons are referred to in this title as "handlers." Such orders shall regulate, in the manner hereinafter in this section provided, only such handling of such agricultural commodity, or product thereof, as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof.

COMMODITIES TO WHICH APPLICABLE

(2) Orders issued pursuant to this section shall be applicable only to the following agricultural commodities and the products thereof (except products of naval stores *and the products of honeybees*),[5] or to any regional, or market classification of any such commodity or product: Milk, fruits (including pecans and walnuts but not including apples, *other than apples produced in the States of Washington, Ore-*

[5] The words "and the products of honeybees" were inserted by public, No. 246, 75th Congress, Chapter 567, 1st session, approved August 5, 1937.

~~gon, and Idaho,~~[6] and not including fruits, other than olives, for canning), tobacco, vegetables (not including vegetables, other than asparagus, for canning), soybeans, hops,[7] honeybees,[8] and naval stores as included in the Naval Stores Act and standards established thereunder (including refined or partially refined oleoresin).

NOTICE AND HEARING

(3) Whenever the Secretary of Agriculture has reason to believe that the issuance of an order will tend to effectuate the declared policy of this title with respect to any commodity or product thereof specified in subsection (2) of this section, he shall give due notice of and an opportunity for a hearing upon a proposed order.

FINDING AND ISSUANCE OF ORDER

(4) After such notice and opportunity for hearing, the Secretary of Agriculture shall issue an order if he finds, and sets forth in such order, upon the evidence introduced at such hearing (in addition to such other findings as may be specifically required by this section) that the issuance of such order and all of the terms and conditions thereof will tend to effectuate the declared policy of this title with respect to such commodity.

TERMS—MILK AND ITS PRODUCTS

(5) In the case of milk and its products, orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7)) no others:

(A) Classifying milk in accordance with the form in which or the purpose for which it is used, and fixing, or providing a method for fixing, minimum prices for each such use classification which all handlers shall pay, and the time when payments shall be made, for milk purchased from producers or associations of producers. Such prices shall be uniform as to all handlers, subject only to adjustments for (1) volume, market, and production differentials customarily applied by the handlers subject to such order, (2) the grade or quality of the milk purchased, and (3) the locations at which delivery of such milk, or any use classification thereof, is made to such handlers.

(B) Providing:

(i) for the payment to all producers and associations of producers delivering milk to the same handler of uniform prices for all milk delivered by them: Provided, That, except in the

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[6] The words ", other than apples produced in the States of Washington, Oregon, and Idaho," were added by Public, No. 98, 76th Congress, Chapter 157, 1st session, approved May 31, 1939.

[7] The word ", hops," was inserted by and the following provision was contained in Public, No. 482, 75th Congress, Chapter 143, 3d session, approved April 13, 1938:

"SEC. 3. No order issued pursuant to section 8c of the Agricultural Adjustment Act, as amended, shall be applicable to hops except during the two crop years next succeeding the date of enactment of this Act."

The provision quoted was amended by Public, No. 91, 76th Congress, Chapter 150, 1st session, approved May 26, 1939, to read as follows:

"SEC. 3. No orders issued pursuant to section 8c of the Agricultural Adjustment Act, as amended, shall be applicable to hops after September 1, 1942."

[8] The word "honeybees," was inserted by Public, No. 246, 75th Congress, Chapter 567, 1st session, approved August 5, 1937.

case of orders covering milk products only, such provision is approved or favored by at least three-fourth of the producers who, during a representative period determined by the Secretry of Agriculture, have been engaged in the production for market of milk covered in such order or by producers who, during such representative period, have produced at least three-fourths of the volume of such milk produced for market during such period; the approval required hereunder shall be separate and apart from any other approval or disapproval provided for by this section; or

(ii) for the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered;

subject, in either case, only to adjustments for (a) volume, market, and production differentials customarily applied by the handlers subject to such order, (b) the grade or quality of the milk delivered, (c) the locations at which delivery of such milk is made, and (d) a further adjustment, equitably to apportion the total value of the milk purchased by any handler, or by all handlers, among producers and associations of producers, on the basis of their *marketings*[*] of milk during a representative period of time.

(C) In order to accomplish the purposes set forth in paragraphs (A) and (B) of this subsection (5), providing a method for making adjustments in payments, as among handlers (including producers who are also handlers), to the end that the total sums paid by each handler shall equal the value of the milk purchased by him at the prices fixed in accordance with paragraph (A) hereof.

(D) Providing that, in the case of all milk purchased by handlers from any producer who did not regularly sell milk during a period of 30 days next preceding the effective date of such order for consumption in the area covered thereby, payments to such producer, for the period beginning with the first regular delivery by such producer and continuing until the end of two full calendar months following the first day of the next succeeding calendar month, shall be made at the price for the lowest use classification specified in such order, subject to the adjustments specified in paragraph (B) of this subsection (5).

(E) Providing (i) except as to producers for whom such services are being rendered by a cooperative marketing association, qualified as provided in paragraph (F) of this subsection (5), for market information to producers and for the verification of weights, sampling, and testing of milk purchased from producers, and for making appropriate deductions therefor from payments to producers, and (ii) for assurance of, and security for, the payment by handlers for milk purchased.

(F) Nothing contained in this subsection (5) is intended or shall be construed to prevent a cooperative marketing association qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act," engaged in making

[*] The word "production" was deleted and the word "marketings" was substituted by section 2 (d) of the Agricultural Marketing Agreement Act of 1937.

collective sales or marketing of milk or its products for the producers thereof, from blending the net proceeds of all its sales in all markets in all use classifications, and making distribution thereof to its producers in accordance with the contract between the association and its producers: Provided, That it shall not sell milk or its products to any handler for use or consumption in any market at prices less than the prices fixed pursuant to paragraph (A) of this subsection (5) for such milk.

(6) No marketing agreement or order applicable to milk and its products in any marketing area shall prohibit or in any manner limit, in the case of the products of milk, the marketing in that area of any milk or product thereof produced in any production area in the United States.

TERMS—OTHER COMMODITIES

(6) In the case of fruits (including pecans and walnuts but not including apples, *other than apples produced in the States of Washington, Oregon, and Idaho*,[10] and not including fruits, other than olives, for canning) and their products, tobacco and its products, vegetables (not including vegetables, other than asparagus, for canning) and their products, soybeans and their products, *hops*,[11] *honeybees*,[12] and naval stores as included in the Naval Stores Act and standards established thereunder (including refined or partially refined oleoresin), orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7)) no others:

(A) Limiting, or providing methods for the limitation of, the total quantity of any such commodity or product, or of any grade, size, or quality thereof, produced during any specified period or periods, which may be marketed in or transported to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, during any specified period or periods by all handlers thereof.

(B) Allotting, or providing methods for allotting, the amount of such commodity or product, or any grade, size, or quality thereof, which each handler may purchase from or handle on behalf of any and all producers thereof, during any specified period or periods, under a uniform rule based upon the amounts [13] sold by such producers in such prior period as the Secretary determines to be representative, or upon the current *quantities available for sale by* [14] such producers, or both, to the end that the total quantity thereof to be purchased, or handled during any specified period or periods shall be apportioned equitably among producers.

(C) Allotting, or providing methods for allotting, the amount of any such commodity or product, or any grade, size, or quality thereof, which each handler may market in or transport to any or all markets

[10] Public, No. 98, 76th Congress, Chapter 157, 1st session, approved May 31, 1939.
[11] Public, No. 482, 75th Congress, Chapter 143, 3d session, approved April 13, 1938.
[12] Public, No. 246, 75th Congress, Chapter 567, 1st session, approved August 5, 1937.
[13] The words "produced or" were deleted by section 2 (e) of the Agricultural Marketing Agreement Act of 1937.
[14] The italicized words were substituted by section 2 (e) of the Agricultural Marketing Agreement Act of 1937, in lieu of the words: "production or sales of".

in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, under a uniform rule based upon the amounts which each such handler has available for current shipment, or upon the amounts shipped by each such handler in such prior period as the Secretary determines to be representative, or both, to the end that the total quantity of such commodity or product, or any grade, size, or quality thereof, to be marketed in or transported to any or all markets in the current of interstate or foreign commerce or so as directly to burden, obstruct, or affect interstate or foreign commerce in such commodity or product thereof, during any specified period or periods shall be equitably apportioned among all of the handlers thereof.

(D) Determining, or providing methods for determining, the existence and extent of the surplus of any such commodity or product, or of any grade, size, or quality thereof, and providing for the control and disposition of such surplus, and for equalizing the burden of such surplus elimination or control among the producers and handlers thereof.

(E) Establishing, or providing for the establishment of, reserve pools of any such commodity or product, or of any grade, size, or quality thereof, and providing for the equitable distribution of the net return derived from the sale thereof among the persons beneficially interested therein.

TERMS COMMON TO ALL ORDERS

(7) In the case of the agricultural commodities and the products thereof specified in subsection (2) orders shall contain one or more of the following terms and conditions:

(A) Prohibiting unfair methods of competition and unfair trade practices in the handling thereof.

(B) Providing that (except for milk and cream to be sold for consumption in fluid form) such commodity or product thereof, or any grade, size, or quality thereof shall be sold by the handlers thereof only at prices filed by such handlers in the manner provided in such order.

(C) Providing for the selection by the Secretary of Agriculture, or a method for the selection, of an agency or agencies and defining their power and duties, which shall include only the powers:

(i) To administer such order in accordance with its terms and provisions;

(ii) To make rules and regulations to effectuate the terms and provisions of such order;

(iii) To receive, investigate, and report to the Secretary of Agriculture complaints of violations of such order; and

(iv) To recommend to the Secretary of Agriculture amendments to such order.

No person acting as a member of an agency established pursuant to this paragraph (C) shall be deemed to be acting in an official capacity, within the meaning of section 10 (g) of this title, unless such person receives compensation for his personal services from funds of the United States.

(D) Incidental to, and not inconsistent with, the terms and conditions specified in subsections (5), (6), and (7) and necessary to effectuate the other provisions of such order.

ORDERS WITH MARKETING AGREEMENT

(8) Except as provided in subsection (9) of this section, no order issued pursuant to this section shall become effective until the handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of not less than 50 per centum of the volume of the commodity or product thereof covered by such order which is produced or marketed within the production or marketing area defined in such order have signed a marketing agreement, entered into pursuant to section 8b of this title, which regulates the handling of such commodity or product in the same manner as such order, except that as to citrus fruits produced in any area producing what is known as California citrus fruits no order issued pursuant to this subsection (8) shall become effective until the handlers of not less than 80 per centum of the volume of such commodity or product thereof covered by such order have signed such a marketing agreement: Provided, That no order issued pursuant to this subsection shall be effective unless the Secretary of Agriculture determines that the issuance of such order is approved or favored:

(A) By at least two-thirds of the producers who (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said order must be approved or favored by three-fourths of the producers), during a representative period determined by the Secretary, have been engaged, within the production area specified in such marketing agreement or order, in the production for market of the commodity specified therein, or who, during such representative period, have been engaged in the production of such commodity for sale in the marketing area specified in such marketing agreement, or order, or

(B) By producers who, during such representative period, have produced for market at least two-thirds of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or who, during such representative period, have produced at least two-thirds of the volume of such commodity sold within the marketing area specified in such marketing agreement or order.

ORDERS WITH OR WITHOUT MARKETING AGREEMENT

(9) Any order issued pursuant to this section shall become effective in the event that, notwithstanding the refusal or failure of handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of more than 50 per centum of the volume of the commodity or product thereof (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said per centum shall be 80 per centum) covered by such order which is produced or marketed within the production or marketing area defined in such order to sign a marketing agreement relating

to such commodity or product thereof, on which a hearing has been held, the Secretary of Agriculture, with the approval of the President, determines:

(A) That the refusal or failure to sign a marketing agreement (upon which a hearing has been held) by the handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity or product thereof covered by such order) of more than 50 per centum of the volume of the commodity or product thereof (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said per centum shall be 80 per centum) specified therein which is produced or marketed within the production or marketing area specified therein tends to prevent the effectuation of the declared policy of this title with respect to such commodity or product, and

(B) That the issuance of such order is the only practical means of advancing the interests of the producers of such commodity pursuant to the declared policy, and is approved or favored:

(i) By at least two-thirds of the producers (except that as to citrus fruits produced in any area producing what is known as California citrus fruits said order must be approved or favored by three-fourths of the producers) who, during a representative period determined by the Secretary, have been engaged, within the production area specified in such marketing agreement or order, in the production for market of the commodity specified therein, or who, during such representative period, have been engaged in the production of such commodity for sale in the marketing area specified in such marketing agreement, or order, or

(ii) By producers who, during such representative period, have produced for market at least two-thirds of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or who, during such representative period, have produced at least two-thirds of the volume of such commodity sold within the marketing area specified in such marketing agreement or order.

MANNER OF REGULATION AND APPLICABILITY

(10) No order shall be issued under this section unless it regulates the handling of the commodity or product covered thereby in the same manner as, and is made applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held. No order shall be issued under this title prohibiting, regulating, or restricting the advertising of any commodity or product covered thereby, nor shall any marketing agreement contain any provision prohibiting, regulating, or restricting the advertising of any commodity or product covered by such marketing agreement.

REGIONAL APPLICATION

(11) (A) No order shall be issued under this section which is applicable to all production areas or marketing areas, or both, of any commodity or product thereof unless the Secretary finds that the issuance of several orders applicable to the respective regional pro-

duction areas or regional marketing areas, or both, as the case may be, of the commodity or product would not effectively carry out the declared policy of this title.

(B) Except in the case of milk and its products, orders issued under this section shall be limited in their application to the smallest regional production areas or regional marketing areas, or both, as the case may be, which the Secretary finds practicable, consistently with carrying out such declared policy.

(C) All orders issued under this section which are applicable to the same commodity or product thereof shall, so far as practicable, prescribe such different terms, applicable to different production areas and marketing areas, as the Secretary finds necessary to give due recognition to the differences in production and marketing of such commodity or product in such areas.

COOPERATIVE ASSOCIATION REPRESENTATION

(12) Whenever, pursuant to the provisions of this section, the Secretary is required to determine the approval or disapproval of producers with respect to the issuance of any order, or any term or condition thereof, or the termination thereof, the Secretary shall consider the approval or disapproval by any cooperative association of producers, bona fide engaged in marketing the commodity or product thereof covered by such order, or in rendering services for or advancing the interests of the producers of such commodity, as the approval or disapproval of the producers who are members of, stockholders in, or under contract with, such cooperative association of producers.

RETAILER AND PRODUCER EXEMPTION

(13) (A) No order issued under subsection (9) of this section shall be applicable to any person who sells agricultural commodities or products thereof at retail in his capacity as such retailer, except to a retailer in his capacity as a retailer of milk and its products.

(B) No order issued under this title shall be applicable to any producer in his capacity as a producer.

VIOLATION OF ORDER

(14) Any handler subject to an order issued under this section, or any officer, director, agent, or employee of such handler, who violates any provision of such order (other than a provision calling for payment of a pro rata share of expenses) shall, on conviction, be fined not less than $50 or more than $500 for each such violation, and each day during which such violation continues shall be deemed a separate violation: Provided, That if the court finds that a petition pursuant to subsection (15) of this section was filed and prosecuted by the defendant in good faith and not for delay, no penalty shall be imposed under this subsection for such violations as occurred between the date upon which the defendant's petition was filed with the Secretary, and the date upon which notice of the Secretary's ruling thereon was given to the defendant in accordance with regulations prescribed pursuant to subsection (15).

PETITION BY HANDLER AND REVIEW

(15) (A) Any handler subject to an order may file a written petition with the Secretary of Agriculture, stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Secretary of Agriculture, with the approval of the President. After such hearing, the Secretary shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law.

(B) The District Courts of the United States (including the Supreme Court of the District of Columbia) in any district in which such handler is an inhabitant, or has his principal place of business, are hereby vested with jurisdiction in equity to review such ruling, provided a bill in equity for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the Secretary by delivering to him a copy of the bill of complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to this subsection (15) shall not impede, hinder, or delay the United States or the Secretary of Agriculture from obtaining relief pursuant to section 8a (6) of this title. Any proceedings brought pursuant to section 8a (6) of this title (except where brought by way of counterclaim in proceedings instituted pursuant to this subsection (15)) shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this subsection (15).

TERMINATION OF ORDERS AND MARKETING AGREEMENTS

(16) (A) The Secretary of Agriculture shall, whenever he finds that any order issued under this section, or any provision thereof, obstructs or does not tend to effectuate the declared policy of this title, terminate or suspend the operation of such order or such provision thereof.

(B) The Secretary shall terminate any marketing agreement entered into under section 8b, or order issued under this section, at the end of the then current marketing period for such commodity, specified in such marketing agreement or order, whenever he finds that such termination is favored by a majority of the producers who, during a representative period determined by the Secretary, have been engaged in the production for market of the commodity specified in such marketing agreement or order, within the production area specified in such marketing agreement or order, or who, during such representative period, have been engaged in the production of such commodity for sale within the marketing area specified in such marketing agreement or order: Provided, That such majority have,

during such representative period, produced for market more than 50 per centum of the volume of such commodity produced for market within the production area specified in such marketing agreement or order, or have, during such representative period, produced more than 50 per centum of the volume of such commodity sold in the marketing area specified in such marketing agreement or order, but such termination shall be effective only if announced on or before such date (prior to the end of the then current marketing period) as may be specified in such marketing agreement or order.

(C) The termination or suspension of any order or amendment thereto or provision thereof, shall not be considered an order within the meaning of this section.

PROVISIONS APPLICABLE TO AMENDMENTS

(17) The provisions of this section, section 8d, and section 8e applicable to orders shall be applicable to amendments to orders: Provided, That notice of a hearing upon a proposed amendment to any order issued pursuant to section 8c, given not less than three days prior to the date fixed for such hearing, shall be deemed due notice thereof.

Milk Prices

(18) The Secretary of Agriculture, prior to prescribing any term in any marketing agreement or order, or amendment thereto, relating to milk or its products, if such term is to fix minimum prices to be paid to producers or associations of producers, or prior to modifying the price fixed in any such term, shall ascertain, in accordance with section 2 and section 8e, the prices that will give such commodities a purchasing power equivalent to their purchasing power during the base period. The level of prices which it is declared to be the policy of Congress to establish in section 2 and section 8e shall, for the purposes of such agreement, order, or amendment, be such level as will reflect the price of feeds, the available supplies of feeds, and other economic conditions which affect market supply and demand, for milk or its products in the marketing area to which the contemplated marketing agreement, order, or amendment relates. Whenever the Secretary finds, upon the basis of the evidence adduced at the hearing required by section 8b or 8c, as the case may be, that the prices that will give such commodities a purchasing power equivalent to their purchasing power during the base period as determined pursuant to section 2 and section 8e are not reasonable in view of the price of feeds, the available supplies of feeds, and other economic conditions which affect market supply and demand for milk and its products in the marketing area to which the contemplated agreement, order, or amendment relates, he shall fix such prices as he finds will reflect such factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest. Thereafter, as the Secretary finds necessary on account of changed circumstances, he shall, after due notice and opportunity for hearing, make adjustments in such prices.[15]

[15] This italicized subsection was added by sec. 2 (f) of the Agricultural Marketing Agreement Act of 1937.

PRODUCER REFERENDUM

(13) For the purpose of ascertaining whether the issuance of an order is approved or favored by producers, as required under the applicable provisions of this title, the Secretary may conduct a referendum among producers. The requirements of approval or favor under any such provision shall be held to be complied with if, of the total number of producers, or the total volume of production, as the case may be, represented in such referendum, the percentage approving or favoring is equal to or in excess of the percentage required under such provision. Nothing in this subsection shall be construed as limiting representation by cooperative associctions as provided in subsection (12).[16]

(f) Section 8d (relating to books and records);

BOOKS AND RECORDS

SEC. 8d. (1) All parties to any marketing agreement, and all handlers subject to an order, shall severally, from time to time, upon the request of the Secretary, to furnish him with such information as he finds to be necessary to enable him to ascertain and determine the extent to which such agreement or order has been carried out or has effectuated the declared policy of this title, and with such information as he finds to be necessary to determine whether or not there has been any abuse of the privilege of exemptions from the anti-trust laws. Such information shall be furnished in accordance with forms of reports to be prescribed by the Secretary. For the purpose of ascertaining the correctness of any report made to the Secretary pursuant to this subsection, or for the purpose of obtaining the information required in any such report, where it has been requested and has not been furnished, the Secretary is hereby authorized to examine such books, papers, records, copies of income-tax reports, accounts, correspondence, contracts, documents, or memoranda, as he deems relevant and which are within the control (1) of any such party to such marketing agreement, or any such handler, from whom such report was requested or (2) of any person having, either directly or indirectly, actual or legal control of or over such party or such handler or (3) of any subsidiary of any such party, handler, or person.

(2) Notwithstanding the provisions of section 7, all information furnished to or acquired by the Secretary of Agriculture pursuant to this section shall be kept confidential by all officers and employees of the Department of Agriculture and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary of Agriculture, or to which he or any officer of the United States is a party, and involving the marketing agreement or order with reference to which the information so to be disclosed was furnished or acquired. Nothing in this section shall be deemed to prohibit (A) the issuance of general statements based upon the reports of a num-

[16] This italicized subsection was added by sec. 2 (f) of the Agricultural Marketing Agreement act of 1937.

ber of parties to a marketing agreement or of handlers subject to an order, which statements do not identify the information furnished by any person, or (B) the publication by direction of the Secretary, of the name of any person violating any marketing agreement or any order, together with a statement of the particular provisions of the marketing agreement or order violated by such person. Any such officer or employee violating the provisions of this section shall upon conviction be subject to a fine of not more than $1,000 or to imprisonment for not more than one year, or to both, and shall be removed from office.

(g) Section 8e (relating to determination of base period);

DETERMINATION OF BASE PERIOD

SEC. 8e. In connection with the making of any marketing agreement or the issuance of any order, if the Secretary finds and proclaims that, as to any commodity specified in such marketing agreement or order, the purchasing power during the base period specified for such commodity in section 2 of this title cannot be satisfactorily determined from available statistics of the Department of Agriculture, the base period, for the purposes of such marketing agreement or order, shall be the post-war period, August 1919–July 1929, or all that portion thereof for which the Secretary finds and proclaims that the purchasing power of such commodity can be satisfactorily determined from available statistics of the Department of Agriculture.

(h) Section 10 (a), (b) (2), (c), (f), (g), (h), and (i) (miscellaneous provisions);

MISCELLANEOUS

SEC. 10. (a) The Secretary of Agriculture may appoint such officers and employees, subject to the provisions of the Classification Act of 1923 and Acts amendatory thereof, and such experts as are necessary to execute the functions vested in him by this title; and the Secretary may make such appointments without regard to the civil service laws or regulations: Provided, That no salary in excess of $10,000 per annum shall be paid to any officer, employee, or expert of the Agricultural Adjustment Administration, which the Secretary shall establish in the Department of Agriculture for the administration of the functions vested in him by this title: And provided further, That the State Administrator appointed to administer this Act in each State shall be appointed by the President, by and with the advice and consent of the Senate. Title II of the Act entitled "An Act to maintain the credit of the United States Government", approved March 20, 1933, to the extent that it provides for the impoundment of appropriations on account of reductions in compensation, shall not operate to require such impoundment under appropriations contained in this Act.

(b) (2)[17] Each order issued by the Secretary under this title shall provide that each handler subject thereto shall pay to any authority

[17] Sec. 10 (b) (2) of the Agricultural Adjustment Act, as amended.

or agency established under such order such handler's pro rata share (as approved by the Secretary) of such expenses as the Secretary may find will necessarily be incurred by such authority or agency, during any period specified by him, for the maintenance and functioning of such authority or agency, other than expenses incurred in receiving, handling, holding, or disposing of any quantity of a commodity received, handled, held, or disposed of by such authority or agency for the benefit or account of persons other than handlers subject to such order. The pro rata share of the expenses payable by a cooperative association of producers shall be computed on the basis of the quantity of the agricultural commodity or product thereof covered by such order which is distributed, processed, or shipped by such cooperative association of producers. Any such authority or agency may maintain in its own name, or in the names of its members, a suit against any handler subject to an order for the collection of such handler's pro rata share of expenses. The several District Courts of the United States are hereby vested with jurisdiction to entertain such suits regardless of the amount in controversy.

(c) The Secretary of Agriculture is authorized, with the approval of the President, to make such regulations with the force and effect of law as may be necessary to carry out the powers vested in him by this title.[18] Any violation of any regulation shall be subject to such penalty, not in excess of $100, as may be provided therein.

(f) The provisions of this title shall be applicable to the United States and its possessions, except the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and the island of Guam; except that, in the case of sugar beets and sugarcane, the President, if he finds it necessary in order to effectuate the declared policy of this Act, is authorized by proclamation to make the provisions of this title applicable to the Philippine Islands, the Virgin Islands, American Samoa, the Canal Zone, and/or the island of Guam.[19]

(g) No person shall, while acting in any official capacity in the administration of this title, speculate, directly or indirectly, in any agricultural commodity or product thereof, to which this title applies, or in contracts relating thereto, or in the stock or membership interests of any association or corporation engaged in handling, processing, or disposing of any such commodity or product. Any person violating this subsection shall upon conviction thereof be fined not more than $10,000 or imprisoned not more than two years, or both.

(h) For the efficient administration of the provisions of part 2 of this title, the provisions, including penalties, of sections 8, 9, and 10 of the Federal Trade Commission Act, approved September 26, 1914, are made applicable to the jurisdiction, powers, and duties of the Secretary in administering the provisions of this title and to any

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[18] Sec. 2 (g) of the Agricultural Marketing Agreement Act of 1937 deletes the following: ", including regulations establishing conversion factors for any commodity and article processed therefrom to determine the amount of tax imposed or refunds to be made with respect thereto".

[19] Sec. 2 (h) of the Agricultural Marketing Agreement Act of 1937 deletes the sentence: "The President is authorized to attach by Executive order any or all such possessions to any internal-revenue collection district for the purpose of carrying out the provisions of this title with respect to the collection of taxes".

person subject to the provisions of this title, whether or not a corporation. Hearings authorized or required under this title shall be conducted by the Secretary of Agriculture or such officer or employee of the Department as he may designate for the purpose. The Secretary may report any violation of any agreement entered into under part 2 of this title to the Attorney General of the United States, who shall cause appropriate proceedings to enforce such agreement to be commenced and prosecuted in the proper courts of the United States without delay.

(i) The Secretary of Agriculture upon the request of the duly constituted authorities of any State is directed, in order to effectuate the declared policy of this title and in order to obtain uniformity in the formulation, administration, and enforcement of Federal and State programs relating to the regulation of the handling of agricultural commodities or products thereof, to confer with and hold joint hearings with the duly constituted authorities of any State, and is authorized to cooperate with such authorities; to accept and utilize, with the consent of the State, such State and local officers and employees as may be necessary; to avail himself of the records and facilities of such authorities; to issue orders (subject to the provisions of section 8c) complementary to orders or other regulations issued by such authorities; and to make available to such State authorities the records and facilities of the Department of Agriculture: Provided, That information furnished to the Secretary of Agriculture pursuant to section 8d (1) hereof shall be made available only to the extent that such information is relevant to transactions within the regulatory jurisdiction of such authorities, and then only upon a written agreement by such authorities that the information so furnished shall be kept confidential by them in a manner similar to that required of Federal officers and employees under the provisions of section 8d (2) hereof.

(j) The term "interstate or foreign commerce" means commerce between any State, Territory, or possession, or the District of Columbia and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or within any Territory or possession, or the District of Columbia. For the purpose of this Act (but in no wise limiting the foregoing definition) a marketing transaction in respect to an agricultural commodity or the product thereof shall be considered in interstate or foreign commerce if such commodity or product is part of that current of interstate or foreign commerce usual in the handling of the commodity or product whereby they, or either of them, are sent from one State to end their transit, after purchase, in another, including all cases where purchase or sale is either for shipment to another State or for the processing within the State and the shipment outside the State of the products so processed. Agricultural commodities or products thereof normally in such current of interstate or foreign commerce shall not be considered out of such current through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this Act. As used herein, the word "State" includes

Territory, the District of Columbia, possession of the United States, and foreign nations.[20]

(i) Section 12 (a) and (c) (relating to appropriation and expense);

APPROPRIATION

SEC. 12. (a) There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $100,000,000 to be available to the Secretary of Agriculture for a lministrative expenses under this title and for payments authorized to be made under section 8. Such sum shall remain available until expended.

To enable the Secretary of Agriculture to finance, under such terms and conditions as he may prescribe, surplus reductions[21] with respect to the dairy- and beef-cattle industries, and to carry out any of the purposes described in subsections (a) and (b) of this section (12) and to support and balance the market for the dairy and beef cattle industries, there is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $200,000,000; Provided, That not more than 60 per centum of such amount shall be used for either of such industries.

(c) The administrative expenses provided for under this section shall include, among others, expenditures for personal services and rent in the District of Columbia and elsewhere, for law books and book of reference, for contract stenographic reporting services, and for printing and paper in addition to allotments under the existing law. The Secretary of Agriculture shall transfer to the Treasury Department, and is authorized to transfer to other agencies, out of funds available for administrative expenses under this title, such sums as are required to pay administrative expenses incurred and refunds made by such department or agencies in the administration of this title.

(j) Section 14 (relating to separability);

SEPARABILITY OF PROVISIONS

SEC. 14. If any provision of this title is declared unconstitutional, or the applicability thereof to any person, circumstance, or commodity is held invalid the validity of the remainder of this title and the applicability thereof to other persons, circumstances, or commodities shall not be affected thereby.

(k) Section 22 (relating to imports);

IMPORTS

SEC. 22 (a) Whenever the President has reason to believe that any one or more articles are being imported into the United States under such conditions and in sufficient quantities as to render or tend

[20] This italicized subsection was added by sec. 2 (i) of the Agricultural Marketing Agreement Act of 1937.

[21] Sec. 2 (j) of the Agricultural Marketing Agreement Act of 1937 deletes the words: "and production adjustments".

to render ineffective or materially interfere with any program or operation undertaken, or to reduce substantially the amount of any product processed in the United States from any commodity subject to and with respect to which any program is in operation, under this title, or the Soil Conservation and Domestic Allotment Act, as amended, he shall cause an immediate investigation to be made by the United States Tariff Commission, which shall give precedence to investigations under this section to determine such facts. Such investigation shall be made after due notice and opportunity for hearing to interested parties and shall be conducted subject to such regulations as the President shall specify.

(b) If, on the basis of such investigation and report to him of findings and recommendations made in connection therewith, the President finds the existence of such facts, he shall by proclamation impose such limitations on the total quantities of any article or articles which may be imported as he finds and declares shown by such investigation to be necessary to prescribe in order that the entry of such article or articles will not render or tend to render ineffective or materially interfere with any program or operation undertaken, or will not reduce substantially the amount of any product processed in the United States from any commodity subject to and with respect to which any program is in operation, under this title or the Soil Conservation and Domestic Allotment Act, as amended: Provided, That no limitation shall be imposed on the total quantity of any article which may be imported from any country which reduces such permissible total quantity to less than 50 per centum of the average annual quantity of such article which was imported from such country during the period from July 1, 1928, to June 30, 1933, both dates inclusive.

(c) No import restriction proclaimed by the President under this section nor any revocation, suspension, or modification thereof shall become effective until fifteen days after the date of such proclamation, revocation, suspension, or modification.

(d) Any decision of the President as to facts under this section shall be final.

(e) After investigation, report, finding, and declaration in the manner provided in the case of a proclamation issued pursuant to subsection (b) of this section, any proclamation or provision of such proclamation may be suspended by the President whenever he finds that the circumstances requiring the proclamation or provision thereof no longer exists, or may be modified by the President whenever he finds that changed circumstances require such modification to carry out the purposes of this section.[22]

Sec. 2. The following provisions, reenacted in section 1 of this act, are amended as follows: [23]

Sec. 3. (a) The Secretary of Agriculture, or such officer or employee of the Department of Agriculture as may be designated

[22] Sec. 5 of Public, No. 461, 74th Cong., approved February 29, 1936, amended sec. 22 of the Agricultural Adjustment Act, as amended, by inserting after the words "this title," wherever they appeared, the words "or the Soil Conservation and Domestic Allotment Act, as amended"; and by deleting the words "an adjustment" whenever they appeared, and inserting in lieu thereof the word "any."

[23] Subsections (a) to (j) inclusive, of section 2 of the Agricultural Marketing Agreement Act of 1937 are incorporated in the preceding text and in the footnotes.

by him, upon written application of any cooperative association, incorporated or otherwise, which is in good faith owned or controlled by producers or organizations thereof, of milk or its products, and which is bona fide engaged in collective processing or preparing for market or handling or marketing (in the current of interstate or foreign commerce, as defined by paragraph (i) of section 2 of this act), milk or its products, may mediate and, with the consent of all parties, shall arbitrate if the Secretary has reason to believe that the declared policy of the Agricultural Adjustment Act, as amended, would be effectuated thereby, bona-fide disputes, between such associations and the purchasers or handlers or processors or distributors of milk or its products, as to terms and conditions of the sale of milk or its products. The power to arbitrate under this section shall apply only to such subjects of the term or condition in dispute as could be regulated under the provisions of the Agricultural Adjustment Act, as amended, relating to orders for milk and its products.

(b) Meetings held pursuant to this section shall be conducted subject to such rules and regulations as the Secretary may prescribe.

(c) No award or agreement resulting from any such arbitration or mediation shall be effective unless and until approved by the Secretary of Agriculture, or such officer or employee of the Department of Agriculture as may be designated by him, and shall not be approved if it permits any unlawful trade practice or any unfair method of competition.

(d) No meeting so held and no award or agreement so approved shall be deemed to be in violation of any of the antitrust laws of the United States.

Sec. 4. Nothing in this act shall be construed as invalidating any marketing agreement, license, or order, or any regulation relating to, or any provision of, or any act of the Secretary of Agriculture in connection with, any such agreement, license, or order which has been executed, issued, approved, or done under the Agricultural Adjustment Act, or any amendment thereof, but such marketing agreements, licenses, orders, regulations, provisions, and acts are hereby expressly ratified, legalized, and confirmed.

Sec. 5. No processing taxes or compensating taxes shall be levied or collected under the Agricultural Adjustment Act, as amended. Except as provided in the preceding sentence, nothing in this act shall be construed as affecting provisions of the Agricultural Adjustment Act, as amended, other than those enumerated in section 1. The provisions so enumerated shall apply in accordance with their terms (as amended by this act) to the provisions of the Agricultural Adjustment Act, this act, and other provisions of law to which they have been heretofore made applicable.

Sec. 6. This act may be cited as the "Agricultural Marketing Agreement Act of 1937."

STATE OF CALIFORNIA
DEPARTMENT OF AGRICULTURE
SACRAMENTO

AGRICULTURAL PRORATE ACT

REVISED TO SEPTEMBER 13, 1941

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AGRICULTURAL PRORATE ACT*

Title

An act to conserve the agricultural wealth of the State of California, and to prevent economic waste in the marketing of agricultural products or crops produced in the State of California, creating an Agricultural Prorate Advisory Commission; providing for the appointment of members of said commission, fixing the term of office of the members of said commission; prescribing the powers, duties and authority of the Director of Agriculture under this act and of said commission and the members thereof; providing for the institution of proration programs with respect to agricultural products or crops; providing for the enforcement of such programs; providing penalties for violation of such programs; providing for the creation of funds for the purposes of said act and providing for the collection thereof; and making an appropriation therefor.
(Title amended by Ch. 894, Stats. 1939.)

(* The original act is Chapter 754, Statutes of 1933, approved June 5, 1933. It was amended by Chapter 471, Statutes of 1935, approved July 15, 1935, and Chapter 743, Statutes of 1935, approved July 20, 1935. It was further amended by Chapter 6, Extra Session, 1938, approved March 22, 1938. Also amended by Chaps. 894, 363, and 548, Stats. 1939 and by Chaps. 603, 1150 and 1186, Stats. 1941.)

The people of the State of California do enact as follows:

Preamble and purposes

SECTION 1. The unreasonable waste of agricultural wealth occasioned by the harvesting, preparation for market and delivery to market of greater quantities of agricultural commodities than are reasonably necessary to supply the demands of the market is opposed to the public interest and the difficulty inherent in any attempt by individuals to correlate within a reasonable degree the supply of any agricultural commodity to current consumptive demands is creating chaotic economic conditions in certain agricultural areas of the State of such severity as to imperil the ability of agricultural producers to contribute in appropriate amounts to the support of ordinary governmental and educational functions, thus tending to increase and increasing the tax burdens of other citizens for the same purposes. In the interest of the public welfare and general prosperity of the State, the unnecessary and unreasonable waste of agricultural wealth, hereinafter referred to as "agricultural waste," involved in the harvesting or preparation for and delivery to market of agricultural commodities for which there exists only a limited consumer demand should be eliminated while at the same time preserving to all agricultural producers an equality of opportunity in the available markets.
(Amended by Ch. 471, Stats. 1935.)

Definitions

SEC. 2. As used in this act:
(a) The term "person" includes any individual, firm, association or corporation.

(b) The term "agricultural waste," in addition to its ordinary meaning, shall include economic waste, and waste incident to the harvesting and/or preparation for any delivery to market of agricultural commodities in excess of reasonable market demands.

(c) The terms "product," "crop" or "commodity" mean any horticultural, viticultural, or vegetable product of the soil, live stock and live stock products and poultry and poultry products, but shall not include milk or milk products.

(d) The terms "proration zone" or "zone" mean any district or districts with respect to which a program of market proration is proposed to be or has been instituted.

(e) The term "commission" means the Agricultural Prorate Advisory Commission unless otherwise indicated by the context.

(f) The term "producer" means any person engaged in the business of growing or producing any agricultural product for commercial use to the extent of at least one producing factor as hereinafter defined.

(g) The term "distributor" means any person, other than a retailer, who acquires and distributes any product at wholesale or retail.

(h) The term "retailer" means any person engaged in the business of making sales exclusively at retail.

(i) The term "handler" means any person receiving agricultural commodities from the producer for the purpose of marketing the same.

(j) The phrase "primary channel of trade" shall mean that transaction in which the producer or his cooperative marketing association loses physical possession of the commodity through the sale thereof or other disposition commercially.

(k) The term "producing factor" means the unit of one acre in commercial production, or such other unit as the commission shall specify, in the event that it finds that more than one acre or a fractional part of an acre, or some other unit of commercial production, is required to assure reasonable control of the commodity. In the case of a proration marketing program for live stock or live stock products or for poultry or poultry products, the producing factor shall be specified in the proration marketing program.

(l) The term "owner" means the producer in possession of agricultural commodities and legally entitled to dispose of the same for marketing purposes.

(m) The term "proration" means the uniform percentage of their total production which all producers may harvest and prepare for market and or market during specified proration periods.

(n) The term "dealer" means any distributor or retailer.

(o) The term "processor" means any person who buys, or otherwise takes title to or possession of, farm products for

the purpose of processing or manufacturing the same or selling, reselling or redelivering the same in dried, canned, extracted, fermented, distilled, or other preserved form, and shall include (1) any person or exchange conducting such business and (2) any person or exchange buying farm products from the producer thereof for the purpose of reselling them to any person or exchange conducting such business.

(p) The term "production" means the total crop of an agricultural commodity of a producer as defined in this section.

(q) The term "director" means the Director of Agriculture of the State of California, and, unless the context otherwise requires, includes any authorized agent of the director.

(r) The singular includes the plural.

(Amended by Ch. 471, Stats. 1935; Ch. 6, Extra Session 1938, approved March 29, 1938, and in effect immediately; Ch. 894, Stats. 1939; Ch. 1150, Stats. 1941.)

Advisory Commission

SEC. 3. The Agricultural Prorate Commission is hereby abolished. The Agricultural Prorate Advisory Commission, consisting of nine members is hereby created. Eight of the members shall be appointed by the Governor in the manner and for the terms hereinafter set forth. The Director of Agriculture shall be ex officio the ninth member. Six of the appointive members of said commission shall be engaged at the time of their appointment in the production of agricultural commodities as their principal occupation, but no two of these shall be appointed as representing the same commodity. One of said appointive members shall be neither a producer nor a handler of agricultural commodities but shall be appointed to represent consumers generally. One appointive member shall be an experienced commercial handler of agricultural products. The terms of office of the members except the director shall be four years and they shall hold office until the appointment and qualification of their successors, except that the terms of office of the said members first appointed shall be fixed by the Governor so that the terms shall expire as follows; Two members, January 1, 1940, two members, January 1, 1941, two members, January 1, 1942, and two members, January 1, 1943.

The members who have been serving as members of the Agricultural Prorate Commission shall serve as members of the Agricultural Prorate Advisory Commission until the appointment of all of the members of the Agricultural Prorate Advisory Commission as provided in this section. Vacancies shall be filled by appointment for the unexpired term.

All such appointments shall be by and with the consent of the Senate, but shall be valid to all intents and purposes, subject, however, to the consent of the Senate at its next regular session, and until such time, the person so appointed shall have as full and ample authority as though confirmed by the Senate. In case the Senate, during its session, fails to act or

refuses its consent to any such appointment, the Governor may, after adjournment of the Senate, appoint some other person, which appointment shall be valid to all intents and purposes, subject, however, to the consent of the Senate at its next regular session, and until such time, the person or persons so appointed shall have as full authority and power as though confirmed by the Senate.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939.)

Organization of commission

SEC. 4. Within 30 days after notice of his appointment each member shall qualify by taking the oath of office and filing the same with the Secretary of State in accordance with law. Within five days after all of said members shall have qualified, they shall organize and elect a president from among their number. The commission shall adopt the general policies as to its activities under this act and may from time to time adopt such rules and regulations as it deems necessary in connection therewith. The director, with the consent of the commission, shall appoint a secretary for the commission, which secretary shall also serve as executive assistant to the director in the administration of the provisions of this act.

The director may appoint an attorney and shall provide for such other personnel as may be necessary and shall prescribe their duties. In carrying out his duties under this act, the director is hereby authorized to utilize the facilities and personnel of the State and county departments of agriculture. The members of said commission shall receive ten dollars ($10) per day for each day they are actually engaged on official business and shall be reimbursed for their actual traveling expenses.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats 1939.)

Office of commission

SEC. 5. The office of the commission shall be in the City of Sacramento and it may meet at such times and in such places as may be expedient and necessary for the proper performance of its duties; provided, however, said commission shall meet at least once every 90 days and the failure of any member to attend three consecutive meetings shall be just cause for his removal from said commission. No member or employee of the commission or member of the program committee or the zone agent shall unduly influence producers in their choice either for or against the institution of an agricultural prorated marketing program or for or against the termination of such a program. At all meetings of the commission a majority of the commission shall constitute a quorum.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939.)

Rules and regulations

SEC. 6. For the purpose of administering and enforcing the provisions of this act, the director is authorized to adopt such necessary rules and regulations as he may from time to time deem advisable and shall conduct any hearing, inquiry or investigation which the director has power to undertake.

or hold. In the conduct of any such hearing, inquiry or investigation the director shall have power to administer oaths, and issue subpenas for the attendance of witnesses and the production of papers, books, maps, accounts, documents and testimony in any inquiry, investigation or hearing ordered or undertaken in any part of the State.

The director may conduct hearings and investigations on behalf of the commission and in that capacity shall have all of the authority granted him in the preceding paragraph.

Advisory Commission hearings

At each hearing held in accordance with the provisions of this act at least one member of the commission must be present. The superior court of the county or city and county in which any such inquiry, investigation or hearing may be held shall have power to compel the attendance of witnesses and to require the disclosure by such witnesses of all facts known to them, relative to the matters under investigation, and the production of papers, maps, books, accounts, documents and testimony as required by any subpenas issued by the director. All parties disobeying the orders or subpenas issued under the authority of the director shall be guilty of contempt and shall be certified to the superior court of the county in which said contempt occurs, which court shall punish such contempt.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939.)

Records

SEC. 7. A full and accurate record of business or acts performed or of testimony taken in pursuance of the provisions of this act shall be kept and be placed on file in the office of the director, which records shall at all times be open to any interested person.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939.)

Establishment of proration zone

SEC. 8. An agricultural prorated marketing program may be instituted for a variety or kind of agricultural commodity and may be based either upon a production zone or upon a market zone, the basis to be specified in the petition therefor.

Ten or more producers of the variety or kind of the commodity proposed to be affected may file with the commission a petition for the establishment of a proration zone and such prorated marketing program.

The commission within its discretion may decline to initiate or act upon any such petition if it determines and is satisfied that said petition has not been presented within a time reasonably in advance of the harvesting of the crop or commodity sought to be prorated so as to permit the formulation and establishment of a sound and effective program and which will effectuate the purposes of this act.

The said petition shall, among other things, contain:

(1) A description of the district or districts comprising the zone upon which the proposed marketing program is to be based.

(2) A general statement of facts showing the necessity for the institution of a prorated marketing program.

(Amended by Ch. 471, Stats. 1935; Ch. 6, Extra Session, 1938; Ch. 894, Stats. 1939.)

Canning figs exempted

SEC. 8.1. By reason of the climatic and other conditions relating to the production and marketing of figs for canning purposes no proration program under this act shall be established for figs for canning purposes. Any such program now in existence shall be forthwith terminated and no further proceedings shall be had thereunder except proceedings relating to such termination.

(Added by Ch. 894, Stats. 1939.)

Grapes in certain counties exempted

SEC. 8.5. By reason of the climatic conditions and other factors relating to the production of grapes therein no proration program shall be applicable as to grapes in Sonoma, Napa, Mendocino, Lake, Santa Clara, Santa Cruz, Alameda, San Benito, Solano, San Luis Obispo, Contra Costa, Monterey, and Marin counties, or any of them.

The provisions of this section shall not affect the validity of the organization or existence of any proration zone or any proration program applicable to grapes except as to the counties herein named.

(Added by Ch. 363, Stats. 1939.)

Hearings upon petition for zone

SEC. 9. Upon the receipt of a petition for the establishment of a prorate program, the director, on behalf of the commission, shall hold a hearing at some central point located within the area described in said petition and proposed to be established as a proration zone.

If the director so requires, there shall be filed with the petition a good and sufficient undertaking, approved by the director to cover the probable cost of conducting the hearing and instituting the prorated marketing program.

Notice of such hearing shall be given at least ten (10) days prior thereto by publication in a newspaper of general circulation printed and published in each county affected and by posting in at least ten (10) conspicuous places in said area. If no paper is published in such area, then said notice shall be published in such paper as is published in the county or has general circulation in such area. In case the proposed proration zone includes more than one area the required notice shall be given in each area and the director shall hold hearings in each. At said hearings the director shall receive and hear the evidence offered by the petitioners in support of the petition and by any interested person in support of or in opposition thereto. All testimony at such hearings shall be under oath.

All evidence and exhibits and all facts and data used directly or indirectly by the director, or introduced at a hearing, shall within a reasonable time after being so used

or so introduced be available at the office of the commission to all interested parties.

Said hearings may be adjourned from time to time and from place to place as the circumstances may require. For the purpose of procuring additional evidence, facts, and data petitioners or opponents shall, upon proper motion, be granted a continuation of any hearing by the director for a period not exceeding five days. A transcript of the proceedings at all such hearings shall be made by the director and shall be open to inspection by any interested party.

(Amended by Ch. 471, Stats. 1935; Ch. 6, Extra Session 1938; Ch. 894, Stats. 1939.)

Economic findings by commission

SEC. 10. If from the evidence and data developed at said hearings it shall be found by the commission that the following facts actually exist:

(1) That the petition is signed in person or by authorized representatives by the required number of producers; and

(2) That the economic stability of the agricultural industry concerned is being imperiled by market conditions prevailing or liable to prevail as to the variety or kind of commodity sought to be prorated or is being imperiled by the existence or imminence of a seasonal or annual surplus; and

(3) That agricultural waste is occurring or is about to occur; and

(4) That the institution of a program of prorated marketing will conserve the agricultural wealth of the State and will prevent threatened economic waste; and

(5) That the institution of a proration program will advance the public welfare without discrimination against any producer; and

(6) That the institution and operation of a proration program will not result in unreasonable profits to the producers and that the commodity named in the petition can not be marketed at a reasonable profit to producers otherwise than by means of such a program; and

(7) That the proposed zone of proration includes all of the territory within this State reasonably necessary to carry out the purposes and attain the objectives of this act;

Then, in that event, the commission shall make written findings to that effect.

If in the case of any petition it shall appear that the inclusion of territory additional to that described in the petition is necessary to the program, the director shall postpone further proceedings until notice shall have been given to the producers within such additional territory in the manner provided for in Section 9 hereof. Thereafter said petition may be amended to include such additional territory and the director may complete said hearing in the manner hereinbefore provided.

All evidence and data developed at any hearings held pursuant to this act shall be for the consideration of the commission. The commission shall review the evidence and data developed as a result of the hearings and shall make written findings and shall grant or deny the petition in accordance with the facts so presented.

(Amended by Ch. 471, Stats. 1935; Ch. 6, Extra Session 1938; Ch. 894, Stats. 1939.)

Producer lists

SEC. 11. If the commission finds in favor of the petition, the director shall require the county agricultural commissioner of each county in which any part of the proposed zone lies to prepare a list of the producers of the commodity in that part of the zone lying in his county, together with the producing factors represented by each of such producers. Each such county agricultural commissioner shall within twenty (20) days prepare such list which shall show the names and addresses of the producers and the producing factors belonging to or controlled by each producer, and upon its completion shall transmit such list to the commission and also shall thereupon post a copy of said list in his office for examination by all interested parties.

The director may require lists of producers within the proposed proration zone from distributors or handlers of the variety or kind of commodity for which a proration program is proposed and from such other source as may be deemed necessary or advisable and may correct the commissioner's list or lists therefrom after comparison.

The director shall notify all producers in each proration zone whose names appear on such lists that an agricultural prorate program is proposed for the commodity to be affected and that the producer is credited with the number of producing factors established by said lists.

Such lists or corrected lists shall be available for inspection in the office of the director to any producer directly affected by the program.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats 1939.)

SEC. 12. (Repealed by Chapter 894, Statutes 1939.)

SEC. 13. (Repealed by Chapter 894, Statutes 1939.)

Corrections of voting lists

SEC. 14. Any producer whose name does not appear on the proper list and any producer claiming an erroneous allotment of producing factors may make application to the agricultural commissioner to be placed on said list, or to be credited with the proper number of producing factors, as the case may be, and upon substantiating his claim, is entitled to have the error corrected. Such application must be made to the agricultural commissioner within 15 days after the lists of names herein described and provided are posted in the office of the agricultural commissioner of the county as

provided in Section 11 hereof. In the event that any such producer shall be dissatisfied with the final action of the agricultural commissioner in that regard, he may, within ten (10) days after notice of such final action by the agricultural commissioner, appeal to the director, whose findings shall be final.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939.)

Election of program committee members

SEC. 15. After the approval of the petition by the commission, the director shall divide the proposed zone into as many districts not exceeding seven as may appear convenient or necessary, and allot to each district the number of producers therefrom who may serve upon a program committee. The director shall thereupon call a meeting of producers in each district at which the producers shall elect persons eligible to serve upon a program committee. Such election shall be by secret ballot after nomination from the floor. Not less than three eligible persons shall be elected for each producer member of the program committee allotted to the district. At such election each producer in attendance shall be entitled to one vote, and voting by proxy shall not be permitted. All eligible persons elected in each district shall be producers within said district. In the event a corporation or a partnership is a producer, it may designate a representative who may be a nominee. From the eligible lists of producers elected in such districts, the director shall, subject to the approval of the commission, select and appoint not less than five and not more than seven members to serve on the program committee. For each member the director shall appoint an alternate. Each district in the zone or area shall be entitled to at least one member and one alternate member on said committee. The director may also, if requested by the program committee and approved by the commission, appoint on said committee in addition to the producer members, not more than two handler members and corresponding alternates who are handlers of the commodity affected by the proration program in the proposed zone.

The persons so appointed by the director as the program committee shall formulate a proration marketing program which shall be submitted to the commission. The commission after a hearing or hearings on the proposed program held within the zone shall make written findings as to whether the program is reasonably calculated to carry out the objectives of this act and based upon said findings shall approve or disapprove the program, or may modify it and approve it as modified. If the producing factor is to be determined by the commission such determination shall be made and shall become a part of the program. The commission shall fix a date prior to which the program, in order to become effective, must be consented to by producers as provided in this act.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939; Ch. 1150, Stats. 1941.)

Assent of producers

SEC. 16. If the program is approved by the commission, the director shall submit a copy of the program in full together with an explanation of the provisions of such program and the reasons therefor to each of the producers of the commodity or their duly authorized agent to be affected within the proposed zone as shown by the lists of producers compiled in accordance with the provisions of this act, accompanied by a printed, typewritten or mimeographed form upon which the producer can record his assent to the program and by a notice of the date prior to which the written assent of the producer to the program must be delivered to the office of the director at Sacramento. A nonprofit cooperative association may assent on behalf of any of its members only if authorized so to do by an instrument in writing signed by the member; provided, that such authority may be revoked as to him by any such member by an instrument in writing filed with the director and with such association, which revocation shall become effective three (3) days after its receipt by the director. A copy of any written authorization of a producer to the nonprofit cooperative association of which he is a member shall be forwarded to the director by the association and likewise a copy of any revocation of such authority. No person, firm, or corporation, other than a nonprofit cooperative association, shall be permitted to consent for a number of producers in excess of thirty per cent (30%) of the producers to be affected, regardless of the manner in which the authority to consent is shown. On or after the date fixed, the director shall canvass the results and if he finds that 65 per cent or more of the producers in the proposed zone and the owners of 51 per cent or more of the producing factors have assented in writing to the proposed program, the director shall declare the program instituted. In any order instituting a proration program the zone affected shall be given some title indicative of the commodity affected.

Assent of cooperative association

Percentage required

Each such zone shall constitute a separate public corporate entity and its affairs shall be managed by a program committee appointed as herein provided.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939.)

Review of orders within 30 days

SEC. 17. Any order of the director instituting a proration program and any other order of the commission or director substantially affecting the rights of any interested party may be reviewed by any court of competent jurisdiction. Any such action must be commenced within 30 days after the effective date of the order complained of.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939.)

Term of office

SEC. 18. In the event of the institution of a marketing program in a proration zone, the committee chosen under Section 15 shall be the proration program committee. The members of said committee shall serve for two years. The marketing program may, however, fix the date upon which

the two-year term of program committee members will terminate. The members of such program committee shall be entitled to compensation at the rate of ten dollars ($10) each for each day while engaged on official business; provided, that such compensation shall not be paid for more than five days in any month unless approved by the director, and members shall be reimbursed for their necessary traveling expenses. Per diem

The director shall appoint in the same manner as the program committee was appointed an alternate for each member of the committee. It shall be the duty of such alternate to sit as a regular member of the committee in case the member for whom he is an alternate fails for any reason to attend any meeting of the committee, and he shall be compensated and reimbursed for his necessary traveling expenses in the same manner and to the same extent as a regular member when so serving. Alternate

Vacancies on the program committee occasioned by the expiration of term, death, or resignation of any member, or by removal for incompetence or inattention or neglect of duties as a member of the program committee by the director, with the approval of the commission, or by a member ceasing to qualify as a producer or handler of the commodity concerned, shall be filled in the same manner as the original appointments were made. Vacancies

The program committee shall appoint an agent, subject to the approval of the director, who shall administer the proration program under the direction of the program committee and who may be removed from office in the same manner as he was appointed. The salary or compensation of such agent shall be fixed by the program committee subject to the approval of the director. Zone agent

Such agent shall appoint such deputy agents and other assistants as may be necessary to direct the program, which appointments shall be subject to the approval of the program committee. Such agents, deputy agents and other assistants are employees of the zone and not of the State of California. No officer or employee shall receive compensation based on a percentage of volume involved in a prorate program, or in any manner that would lend encouragement to the promotion of a proration program for the purpose of increasing salaries and income. Employees

(Amended by Chs. 471 and 743, Stats. 1935; Ch. 6, Extra Session 1938; Ch. 894, Stats. 1939; Ch. 1150, Stats. 1941.)

SEC. 18.1. The marketing program to be made effective in any proration zone shall be so formulated as to rectify as far as possible the adverse marketing conditions specified in Section 10 hereof, and to maintain market stability under the limitations of this act. Such marketing program after being in effect may be altered or modified in minor particulars from time to time by such program committee with the approval Procedure minor amendments

of the commission; provided, that the commission may require the director to hold a hearing in the zone prior to such approval. If any alteration or modification is proposed by the program committee altering the program then in effect, by the addition of any one or more of the particulars (a), (b), (c), (d), or (e) of Section 19.1 hereof, the commission shall not approve such alteration or modification unless a public hearing is held thereon. Following the public hearing a referendum shall be conducted by sending a mail ballot to all producers or their duly authorized agent as shown on the lists of producers of the commodity affected compiled in accordance with the provisions of this act and such alteration or modification shall not become effective if 40 per cent or more of said producers vote against such proposed alteration or modification. Before approving any alteration or modification of any marketing program, the commission must find that the same is reasonably calculated to carry out the purposes and attain the objectives of this act.

Procedure major amendments

Negative referendum

(Added by Ch. 471, Stats. 1935; amended by Ch. 894, Stats. 1939; Ch. 1150, Stats. 1941.)

SEC. 19. Under the authority of a marketing program approved as provided in this act, a program committee shall determine the method, manner and extent of proration and the movement of the prorated commodity from harvest into a primary channel of distribution. Proration may be periodic or seasonal in character and may be based upon actual production, whether in storage or otherwise, or upon estimated production. Any estimation of production shall be subject to revision by the program committee in accordance with crop conditions. In estimating production a program committee shall give consideration, among other factors, to the normal production of the various producing units. The program committee shall be empowered:

Powers of program committee

(a) To appoint and empower subcommittees in the separated producing areas within the zone to facilitate the carrying out of the purposes of this act.

(b) To collaborate and cooperate with agencies or organizations with similar purposes, whether of this State, other States or of the United States, in the formulation and execution of a common marketing program; provided, that in proper cases the commission may require such collaboration and cooperation.

(c) To minimize an existing surplus by cooperating with the proper agencies in the enforcement of applicable existing standardization or other laws of this State, and of the United States, enacted to protect the consuming public from fraud or deception.

(d) To make contracts and agreements in the name of the zone in the furtherance of any of the powers of the program committee.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939.)

SEC. 19.1. The program committee for the purpose of minimizing the effect of surpluses or other adverse market conditions may be empowered in any program in any one or more of the following particulars: Authorized types of regulation

(a) To establish and maintain surplus, stabilization or diversion pools. The program committee shall be authorized to receive from each producer for delivery into a surplus pool or stabilization pool the uncertificated portions of the marketable supply of the agricultural commodity covered by a marketing program and market the same by grades or sizes for the account of such producers when it can be advantageously disposed of either in its original or converted state. The program committee shall designate the quantity or the percentage of the marketable supply of such commodity that shall be placed in the stabilization pool and the quantity or the percentage of the marketable supply of such commodity that shall be placed in the surplus pool. The program committee shall be authorized to receive from each producer for delivery into a diversion pool such quantity or percentage of the production, of each producer, which fails to qualify for marketing or sale under grade, quality or size regulations established in the marketing program or under standardization laws or other laws of this State or of the United States. In operating any such stabilization, surplus or diversion pool, the program committee may fix grading, packing and servicing charges to be assessed against such commodities received into such pools and requiring such handling. The program committee shall have title to all of the commodity in each of such pools and shall handle all of such commodity received into each of such pools and account for the same to each producer who is beneficially interested therein upon a pooled basis. Pools

Grading and packing charges

(1) In the case of surplus pools, the contents of any such pool shall not be marketed in any form which would directly compete with that part of the crop which is regularly certificated or which is in a stabilization pool. However, any part of any such surplus pool may be turned over by a program committee to charitable organizations, self-help cooperatives, and similar agencies under proper safeguards to prevent any part of the commodity so disposed of from directly competing with the part of the crop marketed through the usual channels of trade.

(2) In the case of any stabilization pool, the contents thereof may be disposed of or may be marketed from time to time as the program committee deems advisable, and consistent with the maintenance of stabilized marketing conditions.

(3) In the case of any diversion pool, the contents thereof shall be disposed of for by-products or for other diversion purposes under proper safeguards to prevent any part of the commodity so disposed of from directly competing with the part of the crop marketed through the usual channels of trade. Diversion of surplus

(b) To create, establish or otherwise obtain and operate facilities for the financing, grading, packing, servicing, processing, preparing for market and disposal of such surplus in such manner as to maintain stability in the markets and to dispose of such surplus or the contents of established pools and/or any of their derived products.

Equalization fund

(c) To create, maintain and disburse an equalization fund to be used for the removal of any inequalities between producers as to the total volume marketed through prorated channels resulting from errors in estimating production or surplus or for indemnifying producers whose production, in whole or in part, is diverted in green form or otherwise from normal marketing outlets or diverted to relief, by-products, or other noncompetitive purposes pursuant to a marketing program.

Volume, grade and size regulation

(d) To establish, adopt and apply methods for correlating the marketable supply of any commodity to the reasonable market demands therefor by means of volume limitation, time limitation, diversion, or by grade, quality or size regulations applicable to the total production of any commodity, or to that portion of any commodity which qualifies for marketing pursuant to standards authorized in the marketing program or standardization laws or other laws of this State, or of the United States.

Advertising or trade stimulation

(e) To broaden distribution and increase consuming outlets by appropriate educational and trade stimulation efforts of a general industry nature and not unfairly depreciative of the quality of any other food product.

The cost of the exercise of such powers as are herein granted to the program committee shall be a part of the cost of the operation of the program and shall be obtained through fees in the same manner as other costs of the program; provided, that no part of any funds raised for equalization fund purposes specified in subsection (c) of this section shall be applied to the cost of maintenance of the commission and the Department of Agriculture.

Liability of members

No member or alternate member of any program committee nor any employee thereof shall be held liable individually in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member or employee, except for acts of dishonesty.

Tree and vine removal

(f) For the purpose of providing for the adjustment of production of any agricultural commodity by means of tree or vine pulling, the program committee may receive applications from growers for acreage adjustment payments. The program committee shall, upon proper review and certification, make such acreage adjustment payments on an equitable basis from funds collected for such purpose on a uniform basis from all commercial growers of such agricultural commodity in this State, or from funds received from Federal, State or other agencies for such purpose.

No program of production adjustment adopted hereunder shall authorize payments for the removal of acreages of trees or vines of the species, variety or varieties specified in the program which have, during the three years immediately preceding the date of application, produced an annual yield per acre in excess of the comparably computed average yield from bearing trees or vines of the same species, variety or varieties for the State as a whole, such yields and averages to be determined by the director from statistical data compiled by State or Federal agencies or such other data as the director deems to be representative and reliable.

(Added by Ch. 471, Stats. 1935; amended by Ch. 6, Extra Session 1938; Ch. 894, Stats. 1939; Ch. 1150, Stats. 1941.)

Primary and secondary certificates

SEC. 20. After any marketing program has been formulated and has been approved as provided in this act, the agent for the zone shall assume the administration of the program and any subsequent modification thereof and the issuance of proration certificates thereunder. Such certificates shall be divided into primary and secondary certificates. Each producer shall be entitled to one primary certificate which may indicate the quantities of the commodity, for which the program has been instituted which the producer named in such certificate shall be entitled to harvest or otherwise prepare for market and delivery into the primary channels of trade. Said primary certificates may also indicate from time to time the number of secondary certificates theretofore issued under it. Secondary certificates shall be numbered consecutively and shall be used to control the time and volume of harvesting or other preparation for disposal. Such secondary certificates shall accompany all deliveries of the prorated commodity by producers into a primary trade channel; provided, that in the case of commodities which are normally concentrated for preparation for market, the program committee may authorize harvesting of the entire crop for the purpose of delivery to a concentration point and subsequent marketing control. Such certificates shall not be negotiable between producers except with the approval of the program committee and the director.

In the operation of any program, cooperative and other market agencies entitled to the possession of agricultural commodities for marketing purposes may be authorized in writing by the program committee to receive certificates for producers represented by them and to represent their respective producers when proration is applied to the commodity while in the possession of such agencies.

(Amended by Ch. 471, Stats. 1935; Chs. 548 and 894, Stats. 1939.)

Collection of fees

SEC. 21. The zone agent for each marketing program shall collect, either for each primary certificate or for each secondary certificate or for both such kinds of certificates issued

to producers, a reasonable and proportional fee to be fixed by the program committee, subject to the approval of the director, so calculated as to provide an amount adequate to defray the necessary expenses of instituting and carrying out such marketing program and a proper proportion of the cost of the maintenance of the commission and of the Department of Agriculture in the performance of duties required by this act. The proportion of the fees payable to the commission and to the Department of Agriculture may vary upon a seasonal basis for each program according to the estimated expense to be incurred by the director and the commission in administering such program; provided, that the amount so required shall not exceed fifteen per cent (15%) of the certificate fees collected by the zone agent specifically for administrative purposes and in addition such proportion of fees collected for any trade stimulation or sales promotion program as may be required by the commission and the director to administer such program which shall in no event exceed five per cent (5%) of the fees collected for such purpose, unless the payment of a larger proportion of such funds is approved by the program committee for such marketing program.

Proportion of fees payable to commission

Upon request of any program committee of any marketing program, the commission shall confer with said committee or its representatives prior to fixing the amount or proportion of any fees of said marketing program payable to the Department of Agriculture for maintenance of the commission and the department in the performance of the duties required by this act.

All such fees shall be deposited promptly by the zone agent in a bank or banks approved by the Director of Finance, and shall be accounted for forthwith to the Director of Agriculture. Such deposit shall be made in the name of the zone under which such funds are collected and shall be disbursed by the director, pursuant to rules and regulations prescribed by the director, and approved by the commission, only for the expenditures incurred by the program committee in carrying out the specific purposes and provisions of such marketing program, including all necessary expenses incurred in the formulation, administration and enforcement of such marketing program.

Deposit and expenditure of funds

The proportionate amount of fees payable as determined herein, to the Department of Agriculture shall be withdrawn from such funds monthly by the director and paid into the Department of Agriculture Fund in the State Treasury and shall be used only for the support of the commission and of the Department of Agriculture in carrying out their duties as required by this act.

At the end of any marketing season as designated in each marketing program, after proper provision has been made for the payment of all necessary expenses incurred in connection therewith, any funds remaining to the credit of the program

committee shall be refunded upon a pro rata basis to all persons from whom such funds were collected; provided, that, if the program continues in effect, such refund may be deferred for a period not to exceed six months from the date of the close of the next preceding marketing season so as to permit the program committee to use such residual funds to meet operating expenses in such succeeding season until sufficient funds have been collected to enable such committee to make such refund and to defray current operating expenses. At the time such refund is made, the program committee shall file with the director a claim for such refund to growers entitled thereto; provided, however, that, if the director finds that the amounts so returnable are so small as to make impractical the computation and remitting of such pro rata refund to such persons, the director may authorize the retention of such funds to the credit of the program committee for subsequent use in carrying out such marketing program; provided further, that on or after the effective date of this act the director may authorize the transfer of any balances remaining from previous seasons to the fund available for the then current season and any balances so transferred shall be used for carrying out the marketing program in such current season or the next succeeding season. Refunds to growers

No agent or employee of the program committee shall have or receive any funds collected pursuant to the provisions of this act until such agent or employee has filed with the director a bond in such form and in such penal sum as the director may prescribe.

(Amended by Ch. 743, Stats. 1935; Ch. 894, Stats. 1939; Ch. 1150, Stats. 1941.)

SEC. 22. The director shall have power to establish such rules and regulations consistent with this act as may be necessary to carry out the purposes and attain the objectives thereof. Powers of director

The exercise of the powers granted to a program committee in its administration of a proration program made effective in accordance with the provisions of this act shall be subject to the approval of the director; provided, that if the director finds that the exercise of such powers conforms with the provisions of the program and this act he shall approve such exercise.

The director through his duly authorized representatives and agents, including any zone agent in charge of a proration program, shall have access, solely for the purposes of investigating possible violations of any program, to the records of producers, dealers, distributors, public and private property transportation agencies, and handlers of a commodity as to which a proration program has been instituted, and shall have at all times free and unimpeded access to all buildings, yards, warehouses, stores and transportation facilities and other places in which any commodity under a proration program is

kept, stored, handled or transported. All information obtained shall be confidential and shall not be disclosed except when required in a judicial proceeding.

(Amended by Ch. 471, Stats. 1935; Ch. 6, Extra Session 1938; Ch. 894, Stats. 1939.)

Acts prohibited

SEC. 22.5. It shall be a misdemeanor for:

(1) Any person to wilfully render or furnish a false or fraudulent report, statement or record required under this act;

(2) Any person to deliver into a primary trade channel without proper authority any commodity upon which a proration program shall have been instituted;

(3) Any handler, dealer or carrier to receive or have in his possession, within this State, without proper authority any commodity upon which a proration program has been instituted;

(4) Any person to deliver or to attempt to deliver any commodity that has been diverted under the provisions of any proration program into any channel of trade other than that into which diversion has been ordered;

(5) Any person to aid or abet in the commission of any of the acts specified in this section, and each infraction shall constitute a separate and distinct offense.

Common carriers exempted

The provisions of this section shall not apply to a common carrier operating over a regular route or between fixed termini where such shipment is made by such common carrier in good faith and in accordance with its duties as a common carrier and where a record of every such shipment within or from this State is kept by such common carrier showing the date of shipment, character and quality of shipment, origin and destination of such shipment, and the names of the consignor and the consignee. Such record shall be open to inspection at all reasonable hours by or on the written order of the official or administrative authority charged with the enforcement of this act or any marketing program instituted thereunder.

(Added by Ch. 471, Stats. 1935; amended by Ch. 6, Extra Session 1938; Ch. 894, Stats. 1939.)

Termination of proration program

SEC. 23. After the institution of any proration program such proration program shall be terminated when there is filed with the commission an application for its termination signed by not less than 40 per cent of the producers and by the owners of 40 per cent of the producing factors of the industry within the zone in which the program is effective. The signatures of the producers and owners upon the application shall be those of the producers and owners whose names appear on the list or lists provided for in Section 11 or on any corrected list which the commission shall have had prepared during the existence of the program, or their successors in interest. Each petitioner shall upon affixing his signature thereto write in the date of signing, and no signature to such petition shall be

valid for any purpose if affixed thereto more than six months prior to the filing of such application with the commission. Such petition shall be accompanied by a good and sufficient undertaking in an amount equal to the probable cost of conducting said hearing. A hearing must be held upon the petition to determine the sufficiency of the signatures thereto, which hearing must be held within 30 days after the presentation of the petition. If upon such hearing, it shall be established that the petition to terminate is signed by said required 40 per cent of such producers and by the owners of 40 per cent of the producing factors, the commission shall thereupon terminate the program; provided, that any program on a seasonal crop shall not be terminated except at the end of its marketing season.

In such case the cost of conducting such hearing shall be paid from the funds of the program to the extent that they are available and thereafter from the undertaking. In the event the petition be found insufficiently signed, the entire cost of conducting such hearing shall be paid from the undertaking. In the event of the termination of a program, any funds remaining for the use of the program committee not otherwise disposed of by the provisions of this act shall be deposited in the State Treasury to the credit of the Department of Agriculture Fund.

The director, on behalf of the commission, may at any time initiate an investigation to determine whether or not the facts specified in Section 10 hereof continue to exist. Upon a finding that any one or more of the prerequisite facts no longer exist, the commission shall terminate or suspend said program. In no case shall any program on a seasonal crop be terminated or suspended except at the end of its marketing season.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939; Chs. 603 and 1186, Stats. 1941.)

Injunction proceedings

SEC. 24. Any person who shall possess, market, handle or transport any commodity in violation of any provision of an original or modified proration program approved and made effective or in violation of any rule or regulation adopted by any program committee and approved by the director may be enjoined by the director or by the zone affected with the approval of the director in an action brought in the superior court for the county in which any of such violations is alleged to be occurring. There may be enjoined in the same proceeding any number of defendants alleged to be violating the same program although their actual violations of the program may be separate and distinct and occur in different counties. In any action for injunction brought hereunder, the procedure shall be governed by the provisions of Chapter 3, Title 7, Part 2 of the Code of Civil Procedure of the State of California.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939; Ch. 1186, Stats. 1941.)

Penalties

SEC. 25. Any person who violates any provision of a proration program approved and made effective or who violates any rule or regulation adopted by any program committee and approved by the director shall be liable civilly in an amount not to exceed a sum of five hundred dollars ($500) for each and every violation to be recovered by the director or by the zone affected in an action brought with the approval of the director in any court of competent jurisdiction. All sums recovered under this section shall be deposited in the State Treasury to the credit of the Department of Agriculture Fund.

(Amended by Ch. 471, Stats. 1935; Ch. 894, Stats. 1939.)

Alteration of zone boundaries

SEC. 25.1. Any other area or areas within the State of California producing the same kind or variety of agricultural commodity as a proration zone already established under this act, and competing with such proration zone, may be annexed to such already established proration zone in the following manner:

The area shall be organized as a proration zone and a proration program formulated in the same manner as any other zone, except that the proration and marketing programs shall be identical with those of the existing zone and all rules and regulations shall apply alike to both zones. At the end of the current marketing season the two zones shall be consolidated by order of the commission and thereafter shall constitute one zone. When an additional area or areas are added to a proration zone the existing program committee of the original zone shall function until the end of the current marketing season, at which time a new committee shall be appointed to represent the entire area as provided for in Sections 15 and 18 of this act.

(Added by Ch. 471, Stats. 1935; amended by Ch. 894, Stats. 1939.)

Appropriation

SEC. 26. There is hereby appropriated out of any funds in the State Treasury not otherwise appropriated the sum of ten thousand dollars ($10,000) to be expended by the commission when, as and if necessary in the performance of the duties herein imposed upon it. Said sum shall constitute a loan to said commission and shall be repaid in 10 equal annual installments without interest.

Separation clause

SEC. 27. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this act. The Legislature hereby declares that it would have passed each provision of this act irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases, as provisions hereof, be declared unconstitutional.

(Added by Ch. 471, Stats. 1935.)

Transfer of powers and funds

SEC. 28. The director and the Agricultural Prorate Advisory Commission, upon the effective date of this act, shall succeed to and are hereby vested with all the powers, duties, jurisdiction and responsibilities of the Agricultural Prorate Commission. The Agricultural Prorate Commission shall, immediately upon the effective date of this act, deliver to the director all books, records, documents and all other property of any kind in its possession. The Agricultural Prorate Commission Fund is hereby abolished. All money in said fund on the effective date of this act shall be transferred to the Department of Agriculture Fund. Any rebate or other payment payable from the Agricultural Prorate Commission Fund shall after the effective date of this act be paid from the Department of Agriculture Fund.

(Added by Ch. 894, Stats. 1939.)

Title

SEC. 29. This act shall be known and may be cited as the Agricultural Prorate Act.

(Added by Ch. 894, Stats. 1939.)

Continuation existing program

SEC. 30. All proration programs in effect at the effective date of this act and all zones in existence for the administration of such programs shall remain in existence and in full force and effect and shall be subject to termination, suspension and amendment in the manner in this act provided and shall be adminstered in accordance with the provisions hereof.

Any petition for termination filed before the effective date of this amendatory act shall not be affected by this act, but, if not finally determined, all subsequent proceedings on such petition shall be in conformity with this amendatory act.

(Added by Ch. 894, Stats. 1939.)

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SUPREME COURT OF THE UNITED STATES.

No. 46.—October Term, 1942.

W. B. Parker, Director of Agriculture, Agricultural Prorate Advisory Commission; Raisin Proration Zone No. 1, et al., Appellants,
vs.
Porter L. Brown.

Appeal from the District Court of the United States for the Southern District of California.

[January 4, 1943.]

Mr. Chief Justice Stone delivered the opinion of the Court.

The questions for our consideration are whether the marketing program adopted for the 1940 raisin crop under the California Agricultural Prorate Act[1] is rendered invalid (1) by the Sherman Act, or (2) by the Agricultural Marketing Agreement Act of 1937, as amended, 7 U. S. C. §§ 602, *et seq*, or (3) by the Commerce Clause of the Constitution. 601

Appellee, a producer and packer of raisins in California, brought this suit in the district court to enjoin appellants—the State Director of Agriculture, Raisin Proration Zone No. 1, the members of the State Agricultural Prorate Advisory Commission and of the Program Committee for Zone No. 1, and others charged by the statute with the administration of the Prorate Act—from enforcing, as to appellee, a program for marketing the 1940 crop of raisins produced in "Raisin Proration Zone No. 1". After a trial upon oral testimony, a stipulation of facts and certain exhibits, the district court held that the 1940 raisin marketing program was an illegal interference with and undue burden upon interstate commerce and gave judgment for appellee granting the injunction prayed for. 39 F. Supp. 895. The case was tried by a district court of three judges and comes here on appeal under §§ 266 and 238 of the Judicial Code as amended, 28 U. S. C. §§ 380, 345.

As appears from the evidence and from the findings of the district court, almost all the raisins consumed in the United States,

[1] Act of June 5, 1933, ch. 754, Statutes of California of 1933, as amended by chs. 471 and 743, Statutes of 1935; ch. 6, Extra Session, 1938; chs. 363, 548 and 894, Statutes of 1939; and chs. 603, 1150 and 1186, Statutes of 1941. Its constitutionality under both Federal and State Constitutions was sustained by the California Supreme Court in Agricultural Prorate Commission v. Superior Court, 5 Cal. 2d 550.

and nearly one-half of the world crop, are produced in Raisin Proration Zone No. 1. Between 90 and 95 per cent of the raisins grown in California are ultimately shipped in interstate or foreign commerce.

The harvesting and marketing of the crop in California follows a uniform procedure. The grower of raisins picks the bunches of grapes and places them for drying on trays laid between the rows of vines. When the grapes have been sufficiently dried he places them in "sweat boxes" where their moisture content is equalized. At this point the curing process is complete. The growers sell the raisins and deliver them in the "sweat boxes" to handlers or packers whose plants are all located within the Zone. The packers process them at their plants and then ship them in interstate commerce. Those raisins which are to be marketed in clusters are sometimes merely packed, unstemmed, in suitable containers, but are more often cleaned, fumigated, and, when necessary, steamed to make the stems pliable. Most of the raisins are not sold in clusters; such raisins are stemmed before packing, and most packers also clean, grade and sort them. One variety is also seeded before packing.

The packers sell their raisins through agents, brokers, jobbers and other middlemen, principally located in other states or foreign countries. Until he is ready to ship the raisins the packer stores them in the form in which they have been received from producers. The length of time that the raisins remain at the packing plants before processing and shipping varies from a few days up to two years, depending upon the packer's current supply of raisins and the market demand. The packers frequently place orders with producers for fall delivery, before the crop is harvested, and at the same time enter into contracts for the sale of raisins to their customers. In recent years most packers have had a substantial "carry over" of stored raisins at the end of each crop season, which are usually marketed before the raisins of the next year's crop are marketed.

The California Agricultural Prorate Act authorizes the establishment, through action of state officials, of programs for the marketing of agricultural commodities produced in the state, so as to restrict competition among the growers and maintain prices in the distribution of their commodities to packers. The declared purpose of the Act is to "conserve the agricultural wealth of the State" and to "prevent economic waste in the marketing

of agricultural products" of the state. It authorizes [§ 3] the creation of an Agricultural Prorate Advisory Commission of nine members, of which a state official, the Director of Agriculture, is ex-officio a member. The other eight members are appointed for terms of four years by the Governor and confirmed by the Senate, and are required to take an oath of office. [§ 4].

Upon the petition of ten producers for the establishment of a prorate marketing plan for any commodity within a defined production zone [§ 8], and after a public hearing [§ 9], and after making prescribed economic findings [§ 10] showing that the institution of a program for the proposed zone will prevent agricultural waste and conserve agricultural wealth of the state without permitting unreasonable profits to producers, the Commission is authorized to grant the petition. The Director, with the approval of the commission, is then required to select a program committee from among nominees chosen by the qualified producers within the zone, to which he may add not more than two handlers or packers who receive the regulated commodity from producers for marketing. [§§ 11, 14, 15].

The program committee is required [§ 15] to formulate a proration marketing program for the commodity produced in the zone, which the Commission is authorized to approve after a public hearing and a "finding that the program is reasonably calculated to carry out the objectives of the Act." The Commission may, if so advised, modify the program and approve it as modified. If the proposed program, as approved by the Commission, is consented to by 65 per cent in number of producers in the zone owning 51 per cent of the acreage devoted to production of the regulated crop, the Director is required to declare the program instituted. [§ 16].

Authority to administer the program, subject to the approval of the Director of Agriculture, is conferred on the program committee. [§§ 6, 18, 22.] Section 22.5 declares that it shall be a misdemeanor, which is punishable by fine and imprisonment [~~Criminal~~ Penal Code § 19], for any producer to sell or any handler to receive or possess without proper authority any commodity for which a proration program has been instituted. Like penalty is imposed upon any person who aids or abets in the commission of any of the acts specified in the section, and it is declared that each "infraction shall constitute a separate and distinct offense". Section 25 imposes a civil liability of $500 "for each and every violation" of any provision of a proration program.

The seasonal proration marketing program for raisins, with which we are now concerned, became effective on September 7, 1940. This provided that the program committee should classify raisins as "standard", "substandard", and "inferior"; "inferior" raisins are those which are unfit for human consumption, as defined in the Federal Food, Drug and Cosmetic Act, 21 U. S. C. §§ 301 *et seq.* The committee is required to establish receiving stations within the zone to which every producer must deliver all raisins which he desires to market. The raisins are graded at these stations. All inferior raisins are to be placed in the "inferior raisin pool", to be disposed of by the committee "only for assured by-product and other diversion purposes". All substandard raisins, and at least 20 per cent of the total standard and substandard raisins produced, must be placed in a "surplus pool". Raisins in this pool may also be disposed of only for "assured by-product and other diversion purposes", except that under certain circumstances the program committee may transfer standard raisins from the surplus pool to the stabilization pool. Fifty per cent of the crop must be placed in a "stabilization pool".

Under the program the producer is permitted to sell the remaining 30 per cent of his standard raisins, denominated "free tonnage", through ordinary commercial channels, subject to the requirement that he obtain a "secondary certificate" authorizing such marketing and pay a certificate fee of $2.50 for each ton covered by the certificate. Certification is stated to be a device for controlling "the time and volume of movement" of free tonnage into such ordinary commercial channels. Raisins in the stabilization pool are to be disposed of by the committee "in such manner as to obtain stability in the market and to dispose of such raisins", but no raisins (other than those subject to special lending or pooling arrangements of the Federal Government) can be sold by the committee at less than the prevailing market price for raisins of the same variety and grade on the date of sale. Under the program the committee is to make advances to producers of from $25 to $27.50 a ton, depending upon the variety of raisins, for deliveries into the surplus pool, and from $50 to $55 a ton for deliveries into the stabilization pool. The committee is authorized to pledge the raisins held in those pools in order to secure funds to finance pool operations and make advances to growers.

Appellee's bill of complaint challenges the validity of the proration program as in violation of the Commerce Clause and the

Sherman Act; in support of the decree of the district court he also urges that it conflicts with and is superseded by the Federal Agricultural Marketing Agreement Act of 1937. The complaint alleges that he is engaged within the marketing zone both in producing and in purchasing and packing raisins for sale and shipment interstate; that before the adoption of the program he had entered into contracts for the sale of 1940 crop raisins; that unless enjoined appellants will enforce the program against respondent by criminal prosecutions and will prevent him from marketing his 1940 crop, from fulfilling his sales contracts, and from purchasing for sale and selling in interstate commerce raisins of that crop.

Appellee's allegations of irreparable injury are in general terms, but it appears from the evidence that he had produced 200 tons of 1940 crop raisins; that he had contracted to sell 762½ tons of the 1940 crop; that he had dealt in 2,000 tons of raisins of the 1939 crop, and expected to sell, if the challenged program were not in force, 3,000 tons of the 1940 crop at $60 a ton; that the preseason price to growers of raisins of the 1940 crop, before the program became effective, was $45 per ton, and that immediately afterward it rose to $55 per ton or higher. It also appears that the district court having awarded the final injunction prayed, appellee has proceeded with the marketing of his 1940 crop and has disposed of all except twelve tons, which remain on hand. Although the district court found that the amount in controversy exceeds $3,000, we are of opinion that as the complaint assails the validity of the program under the anti-trust laws, 15 U. S. C. §§ 1-33, the suit is one "arising under" a "law regulating commerce" and allegation and proof of the jurisdictional amount are not required. 28 U. S. C. §§ 41 (1), (8); *Peyton* v. *Railway Express Agency*, 316 U. S. 350. The majority of the Court is also of opinion that the suit is within the equity jurisdiction of the court since the complaint alleges and the evidence shows threatened irreparable injury to respondent's business and threatened prosecutions by reason of his having marketed his crop under the protection of the district court's decree.

Validity of the Prorate Program under the Sherman Act.

Section 1 of the Sherman Act, 15 U. S. C. § 1, makes unlawful "every contract, combination . . . or conspiracy, in restraint of trade or commerce among the several States". And §2, 15 U. S. C. § 2, makes it unlawful to "monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the

several States". We may assume for present purposes that the California prorate program would violate the Sherman Act if it were organized and made effective solely by virtue of a contract, combination or conspiracy of private persons, individual or corporate. We may assume also, without deciding, that Congress could, in the exercise of its commerce power, prohibit a state from maintaining a stabilization program like the present because of its effect on interstate commerce. Occupation of a legislative "field" by Congress in the exercise of a granted power is a familiar example of its constitutional power to suspend state laws. See *Adams Express Co.* v. *Croninger*, 226 U. S. 491, 505; *Napier* v. *Atlantic Coast Line*, 272 U. S. 605, 607; *Missouri Pacific* v. *Porter*, 273 U. S. 341; *Illinois Gas Co.* v. *Public Service Co.*, 314 U. S. 498, 510.

But it is plain that the prorate program here was never intended to operate by force of individual agreement or combination. It derived its authority and its efficacy from the legislative command of the state and was not intended to operate or become effective without that command. We find nothing in the language of the Sherman Act or in its history which suggests that its purpose was to restrain a state or its officers or agents from activities directed by its legislature. In a dual system of government in which, under the Constitution, the states are sovereign, save only as Congress may constitutionally subtract from their authority, an unexpressed purpose to nullify a state's control over its officers and agents is not lightly to be attributed to Congress.

The Sherman Act makes no mention of the state as such, and gives no hint that it was intended to restrain state action or official action directed by a state. The Act is applicable to "persons" including corporations [§ 7], and it authorizes suits under it by persons and corporations [§ 15]. A state may maintain a suit for damages under it, *Georgia* v. *Evans*, 316 U. S. 159, but the United States may not, *United States* v. *Cooper Corp.*, 312 U. S. 600—conclusions derived not from the literal meaning of the words "person" and "corporation" but from the purpose, the subject matter, the context and the legislative history of the statute.

There is no suggestion of a purpose to restrain state action in the Act's legislative history. The sponsor of the bill which was ultimately enacted as the Sherman Act declared that it prevented only "business combinations". 21 Cong. Rec. 2562, 2457; see also at 2459, 2461. That its purpose was to suppress combinations to restrain competition and attempts to monopolize by individ-

uals and corporations, abundantly appears from its legislative history. See *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 492-93 and n. 15; *United States* v. *Addyston Pipe & Steel Co.*, 85 Fed. 271, affirmed 175 U. S. 211; *Standard Oil Co.* v. *United States*, 221 U. S. 1, 54-58.

True, a state does not give immunity to those who violate the Sherman Act by authorizing them to violate it, or by declaring that their action is lawful, *Northern Securities Co.* v. *United States*, 193 U. S. 197, 332, 344-47; and we have no question of the state or its municipality becoming a participant in a private agreement or combination by others for restraint of trade, cf. *Union Pacific R. Co.* v. *United States*, 313 U. S. 450. Here the state command to the Commission and to the program committee of the California Prorate Act is not rendered unlawful by the Sherman Act since, in view of the latter's words and history, it must be taken to be a prohibition of individual and not state action. It is the state which has created the machinery for establishing the prorate program. Although the organization of a prorate zone is proposed by producers, and a prorate program, approved by the Commission, must also be approved by referendum of producers, it is the state, acting through the Commission, which adopts the program and which enforces it with penal sanctions, in the execution of a governmental policy. The prerequisite approval of the program upon referendum by a prescribed number of producers is not the imposition by them of their will upon the minority by force of agreement or combination which the Sherman Act prohibits. The state itself exercises its legislative authority in making the regulation and in prescribing the conditions of its application. The required vote on the referendum is one of these conditions. Compare *Currin* v. *Wallace*, 306 U. S. 1, 16; *Hampton & Co.* v. *United States*, 276 U. S. 394, 407; *Wickard* v. *Filburn*, 317 U. S. —.

The state in adopting and enforcing the prorate program made no contract or agreement and entered into no conspiracy in restraint of trade or to establish monopoly but, as sovereign, imposed the restraint as an act of government which the Sherman Act did not undertake to prohibit. *Olsen* v. *Smith*, 195 U. S. 332, 344-45; cf. *Lowenstein* v. *Evans*, 69 Fed. 908, 910.

Validity of the Program Under the Agricultural Marketing Agreement Act

The Agricultural Marketing Agreement Act of 1937, 50 Stat. 246, 7 U. S. C. §§ 601, *et seq.*, authorizes the Secretary of Agri-

culture to issue orders limiting the quantity of specified agricultural products, including fruits, which may be marketed "in the current of . . . . or so as directly to burden, obstruct or affect interstate or foreign commerce". Such orders may allot the amounts which handlers may purchase from any producer by means which equalize the amount marketed among producers; may provide for the control and elimination of surpluses and for the establishment of reserve pools of the regulated produce. [§ 8c(6)]. The federal statute differs from the California Prorate Act in that its sanction falls upon handlers alone while the state act [§ 22.5(3)] applies to growers and extends also to handlers so far as they may unlawfully receive or have in their possession within the state any commodity subject to a prorate program.

We may assume that the powers conferred upon the Secretary would extend to the control of surpluses in the raisin industry through a pooling arrangement such as was promulgated under the California Prorate Act in the present case. See *United States* v. *Rock Royal Co-op.*, 307 U. S. 533; *Currin* v. *Wallace*, *supra*. We may assume also that a stabilization program adopted under the Agricultural Marketing Agreement Act would supersede the state act. But the federal act becomes effective only if a program is ordered by the Secretary. Section 8c(3) provides that whenever the Secretary of Agriculture "has reason to believe" that the issuance of an order will tend to effectuate the declared policy of the Act with respect to any commodity he shall give due notice of an opportunity for a hearing upon a proposed order, and § 8c(4) provides that after the hearing he shall issue an order if he finds and sets forth in the order that its issuance will tend to effectuate the declared policy of the Act with respect to the commodity in question. Since the Secretary has not given notice of hearing and has not proposed or promulgated any order regulating raisins it must be taken that he has no reason to believe that issuance of an order will tend to effectuate the policy of the Act.

The Secretary, by § 10(i), is authorized "in order to effectuate the declared policy" of the Act, and "in order to obtain uniformity in the formulation, administration and enforcement of Federal and State programs relating to the regulation of the handling of agricultural commodities," to confer and cooperate with duly constituted authorities of any state. From this and the whole structure of the Act, it would seem that it contemplates that its policy may

be effectuated by a state program either with or without the promulgation of a federal program by order of the Secretary. Cf. *United States* v. *Rock Royal Cooperative, Inc., supra.* It follows that the adoption of an adequate program by the state may be deemed by the Secretary a sufficient ground for believing that the policies of the federal act will be effectuated without the promulgation of an order.

It is evident, therefore, that the Marketing Act contemplates the existence of state programs at least until such time as the Secretary shall establish a federal marketing program, unless the state program in some way conflicts with the policy of the federal act. The Act contemplates that each sovereign shall operate "in its own sphere but can exert its authority in conformity rather than in conflict with that of the other". H. Rep. No. 1241, 74th Cong., 1st Sess. pp. 22-23; S. Rep. 1011, 74th Cong., 1st Sess. p. 15.[2] The only suggested possibility of conflict is between the declared purposes of the two acts. The object of the federal statute is stated to be the establishment, by exercise of the power conferred on the Secretary, of "orderly marketing conditions for agricultural commodities in interstate commerce" such as will tend to establish "parity prices" for farm products,[3] but with the further purpose that, in the interest of consumers, current consumptive demand is to be considered and that no action shall be taken for the purpose of maintaining prices above the parity level. [§ 2].

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[2] See also 79 Cong. Rec. 9470, 11149-50, 11153; Hearings Before the Senate Committee on Agriculture and Forestry on S. 1807, (March, 1935) 29, 73; Hearings Before the House Committee on Agriculture (Feb.–March, 1935) 53, 178-9. The Agricultural Marketing Agreement Act of 1937 was for the most part a reenactment of certain provisions of the Agricultural Adjustment Act of 1933, 48 Stat. 31, as amended in 1935, 49 Stat. 753. Sec. 8(i) was first introduced in 1935, and reenacted without change in 1937.

[3] A "parity" price is one which will "give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period". 7 U. S. C. § 602(1). The parity price is computed by multiplying an index of prices paid by farmers for goods used in farm production, and for family living expenses, together with real estate taxes and interest on farm indebtedness, by the average price during the base period of the commodity in question. See Dept. of Agriculture, Parity Prices, What They Are and How They Are Calculated (1942). The base period for commodities other than tobacco and potatoes is August 1909–July 1914. However, by 7 U. S. C. § 608e the period of August 1909–July 1929 or a part thereof may be used for any commodity as to which the Secretary finds and proclaims that adequate statistics for the 1909-14 period are not available. By proclamation dated June 26, 1942, the Secretary designated the period 1919-1929 as the base period for raisins. 7 Fed. Reg. 4867.

The declared objective of the California Act is to prevent excessive supplies of agricultural commodities from "adversely affecting" the market, and although the statute speaks in terms of "economic stability" and "agricultural waste" rather than of price, the evident purpose and effect of the regulation is to "conserve agricultural wealth of the state" by raising and maintaining prices, but "without permitting unreasonable profits to producers". [§ 10]. The only possibility of conflict would seem to be between a State program which would raise prices beyond the parity price prescribed by the federal Act, a condition which has not occurred.[4]

That the Secretary has reason to believe that the state act will tend to effectuate the policies of the federal act so as not to require the issuance of an order under the latter is evidenced by the approval given by the Department of Agriculture to the state program by the loan agreement between the state and the Commodity Credit Corporation.[5] By § 302 of the Agricultural Adjustment Act of 1938, 52 Stat. 43, 7 U. S. C. § 1302 (a), the Commodity Credit Corporation is authorized "upon the recommendation of the Secretary and with the approval of the President, to make available loans on agricultural commodities . . . . ". The "amount, terms, and conditions" of such loans are to be "fixed by the Secretary, subject to the approval of the Corporation and the President". Under this authority the Commodity Credit Corporation made loans of $5,146,000 to Zone No. 1, secured by a pledge of 109,000 tons of 1940 crop raisins in the surplus and stabilization pools. These

[4] The parity price for raisins on June 15, 1942, as published by the Department of Agriculture was $100.51 per ton. Preliminary figures show the average price for the 1941-42 crop to be $80.60. Parity Prices, What they Are and How They are Computed, *supra*, vii. Parity prices for raisins for previous years are not published. However they may be computed from the base period price of $105.80 and the indices of prices paid by farmers published by the Department of Agriculture in the statistical publications cited *infra*, note 9. Such computations for 1933 and subsequent years, supplied by the Department of Agriculture, indicate that while the price received by the farmer for the 1940 crop was $57.60 the parity price for 1940 was $80.41 and for 1941 was $86.76. They further indicate that raisin prices have not since 1933 equalled parity and that the field prices for all crops prior to that of 1941 have been from $15 to $40 per ton below parity.

[5] The Commodity Credit Corporation was created by Executive Order No. 6340, October 16, 1933. It has been continued in existence by Acts of Congress, 49 Stat. 4; 50 Stat. 5; 53 Stat. 510. By Reorganization Plan No. I, 53 Stat. 1429, approved by Act of Congress, 53 Stat. 813, and effective July 1, 1939, the Corporation was transferred to the Department of Agriculture, to be "administered in such department under the general direction and supervision of the Secretary of Agriculture." By Executive Order No. 8219, Aug. 7, 1939, 4 Fed. Reg. 3565, exclusive voting rights in its capital stock were vested in the Secretary.

loans were ultimately liquidated by sales of 76,000 tons to packers and 33,000 tons to the Federal Surplus Marketing Administration, an agency of the Department of Agriculture,[6] for relief distribution and for export under the Lend-Lease program.[7] The loans were conditional upon the adoption by the state of the present seasonal marketing program. We are informed by the Government, which at our request filed a brief amicus curiae, that under the loan agreement prices and sales policies as to the pledged raisins were to be controlled by a committee appointed by the Secretary, and that officials of the Department of Agriculture collaborated in drafting the 1940 state raisin program.

Section 302 of the Agricultural Adjustment Act of 1938 requires the Commodity Credit Corporation to make non-recourse loans to producers of certain agricultural products at specified percentages of the parity price, and authorizes loans on any agricultural commodity. The Government informs us that in making loans under the latter authority, § 302 has been construed by the Department of Agriculture as requiring the loans to be made only in order to effectuate the policy of federal agricultural legislation.[8] Section 2 of the Agricultural Adjustment Act of 1938 declares it to be the policy of Congress to achieve the statutory objectives through loans. The Agricultural Adjustment Act of 1938 and the Agricultural Marketing Agreement Act of 1937 were both derived from the Agricultural Adjustment Act of 1935, 48 Stat. 31, and

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[6] The Surplus Marketing Administration was created by Reorganization Plan No. III, 45 Stat. 1232, approved 54 Stat. 231, effective April 13, 1940, June 30, as a consolidation of the Division of Marketing and Marketing Agreements of the Agricultural Adjustment Administration, and the Federal Surplus Commodities Corporation. The Surplus Commodities Corporation was incorporated on October 4, 1933, under the name of the Federal Surplus Relief Corporation. Its existence as "an agency of the United States under the direction of the Secretary of Agriculture" was continued by Acts of Congress, 50 Stat. 323; 52 Stat. 38. The members of the Corporation are the Secretary of Agriculture, the Administrator of the Agricultural Adjustment Administration, and the Governor of the Farm Credit Administration.

As successor to the Corporation the Surplus Marketing Administration exercises the authority given by § 32 of the Agricultural Adjustment Act of 1935, 7 U. S. C. § 612c, to use 30% of annual gross customs receipts to encourage the exportation, and the domestic consumption by persons in low income groups, of agricultural commodities, and to reestablish farmers' purchasing power. As successor to the Division of Markets and Marketing Agreements, the Administration is charged with the enforcement of the Agricultural Marketing Agreement Act of 1937.

[7] Report of the President of the Commodity Credit Corporation (1941) 14, 21; Wm. J. Cecil (Zone Agent, Raisin Proration Zone No. 1), The 1940 Raisin Program, 30 Calif. Dept. of Agriculture Bulletin 46.

[8] See also Report of the President of the Commodity Credit Corporation (1940) 4, 6.

are coordinate parts of a single plan for raising farm prices to parity levels. The conditions imposed by the Secretary of Agriculture in the loan agreement with the State of California, and the collaboration of federal officials in the drafting of the program, must be taken as an expression of opinion by the Department of Agriculture that the state program thus aided by the loan is consistent with the policies of the Agricultural Adjustment and Agricultural Marketing Agreement Acts. We find no conflict between the two acts and no such occupation of the legislative field by the mere adoption of the Agricultural Marketing Agreement Act, without the issuance of any order by the Secretary putting it into effect, as would preclude the effective operation of the state act.

We have no occasion to decide whether the same conclusion would follow if the state program had not been adopted with the collaboration of officials of the Department of Agriculture and aided by loans from the Commodity Credit Corporation recommended by the Secretary of Agriculture.

Validity of the Program under the Commerce Clause.

The court below found that approximately 95 per cent of the California raisin crop finds its way into interstate or foreign commerce. It is not denied that the proration program is so devised as to compel the delivery by each producer, including appellee, of over two-thirds of his 1940 raisin crop to the program committee, and to subject it to the marketing control of the committee. The program, adopted through the exercise of the legislative power delegated to state officials, has the force of law. It clothes the committee with power and imposes on it the duty to control marketing of the crop so as to enhance the price or at least to maintain prices by restraints on competition of producers in the sale of their crop. The program operates to eliminate competition of the producers in the terms of sale of the crop, including price. And since 95 per cent of the crop is marketed in interstate commerce the program may be taken to have a substantial effect on the commerce, in placing restrictions on the sale and marketing of a product to buyers who eventually sell and ship it in interstate commerce.

The question is thus presented whether in the absence of congressional legislation prohibiting or regulating the transactions affected by the state program, the restrictions which it imposes upon the sale within the state of a commodity by its producer to a processor who contemplates doing, and in fact does work upon the

commodity before packing and shipping it in interstate commerce, violate the Commerce Clause.

The governments of the states are sovereign within their territory save only as they are subject to the prohibitions of the Constitution or as their action in some measure conflicts with powers delegated to the National Government, or with Congressional legislation enacted in the exercise of those powers. This Court has repeatedly held that the grant of power to Congress by the Commerce Clause did not wholly withdraw from the states the authority to regulate the commerce with respect to matters of local concern, on which Congress has not spoken. *Minnesota Rate Cases*, 230 U. S. 352, 399-400; *South Carolina Highway Dept.* v. *Barnwell Bros.*, 303 U. S. 177, 187, *et seq.*; *California* v. *Thompson*, 313 U. S. 109, 113-14 and cases cited; *Duckworth* v. *Arkansas*, 314 U. S. 390. *A fortiori* there are many subjects and transactions of local concern not themselves interstate commerce or a part of its operations which are within the regulatory and taxing power of the states, so long as state action serves local ends and does not discriminate against the commerce, even though the exercise of those powers may materially affect it. Whether we resort to the mechanical test sometimes applied by this Court in determining when interstate commerce begins with respect to a commodity grown or manufactured within a state and then sold and shipped out of it—or whether we consider only the power of the state in the absence of Congressional action to regulate matters of local concern, even though the regulation affects or in some measure restricts the commerce—we think the present regulation is within state power.

In applying the mechanical test to determine when interstate commerce begins and ends (see *Federal Compress Co.* v. *McLean*, 291 U. S. 17, 21 and cases cited; *Minnesota* v. *Blasius*, 290 U. S. 1 and cases cited) this Court has frequently held that for purposes of local taxation or regulation "manufacture" is not interstate commerce even though the manufacturing process is of slight extent. *Crescent Oil Co.* v. *Mississippi*, 257 U. S. 129; *Oliver Iron Co.* v. *Lord*, 262 U. S. 172; *Utah Power & Light Co.* v. *Pfost*, 286 U. S. 165; *Hope Gas Co.* v. *Hall*, 274 U. S. 284; *Heisler* v. *Thomas Colliery*, 260 U. S. 245; *Champlin Refining Co.* v. *Commission*, 286 U. S. 210; *Bayside Fish Co.* v. *Gentry*, 297 U. S. 422. And such regulations of manufacture have been sustained where, aimed at matters of local concern, they had the effect of preventing commerce in the regulated article. *Kidd* v. *Pearson*, 128 U. S. 1;

Champlin Refining Co. v. *Commission, supra; Sligh* v. *Kirkwood,* 237 U. S. 52; see *Capital City Dairy Co.* v. *Ohio,* 183 U. S. 238, 245; *Thompson* v. *Consolidated Gas Co.,* 300 U. S. 55, 77; cf. *Bayside Fish Co.* v. *Gentry, supra.* A state is also free to license and tax intrastate buying where the purchaser expects in the usual course of business to resell in interstate commerce. *Chassaniol* v. *Greenwood,* 291 U. S. 584. And no case has gone so far as to hold that a state could not license or otherwise regulate the sale of articles within the state because the buyer, after processing and packing them, will, in the normal course of business, sell and ship them in interstate commerce.

All of these cases proceed on the ground that the taxation or regulation involved, however drastically it may affect interstate commerce, is nevertheless not prohibited by the Commerce Clause where the regulation is imposed before any operation of interstate commerce occurs. Applying that test, the regulation here controls the disposition, including the sale and purchase, of raisins before they are processed and packed preparatory to interstate sale and shipment. The regulation is thus applied to transactions wholly intrastate before the raisins are ready for shipment in interstate commerce.

It is for this reason that the present case is to be distinguished from *Lemke* v. *Farmers Grain Co.,* 258 U. S. 50, and *Shafer* v. *Farmers Grain Co.,* 268 U. S. 189, on which appellee relies. There the state regulation held invalid was of the business of those who purchased grain within the state for immediate shipment out of it. The Court was of opinion that the purchase of the wheat for shipment out of the state without resale or processing was a part of the interstate commerce. Compare *Chassaniol* v. *Greenwood, supra.*

This distinction between local regulation of those who are not engaged in commerce, although the commodity which they produce and sell to local buyers is ultimately destined for interstate commerce, and the regulation of those who engage in the commerce by selling the product interstate, has in general served, and serves here, as a ready means of distinguishing those local activities which, under the Commerce Clause, are the appropriate subject of state regulation despite their effect on interstate commerce. But courts are not confined to so mechanical a test. When Congress has not exerted its power under the Commerce Clause, and state regulation of matters of local concern is so related to interstate commerce that it also operates as a regulation of that commerce, the reconciliation of the power thus granted with that reserved to the state

is to be attained by the accommodation of the competing demands of the state and national interests involved. See *Di Santo* v. *Pennsylvania*, 273 U. S. 34, 44 (with which compare *California* v. *Thompson*, *supra*); *South Carolina Highway Dept.* v. *Barnwell Bros.*, *supra*; *Milk Board* v. *Eisenberg Co.*, 306 U. S. 346; *Illinois Gas Co.* v. *Public Service Comm.*, 314 U. S. 498, 504-5.

Such regulations by the state are to be sustained, not because they are "indirect" rather than "direct", see *Di Santo* v. *Pennsylvania*, *supra*; cf. *Wickard* v. *Filburn*, *supra*, not because they control interstate activities in such a manner as only to affect the commerce rather than to command its operations. But they are to be upheld because upon a consideration of all the relevant facts and circumstances it appears that the matter is one which may appropriately be regulated in the interest of the safety, health and well-being of local communities, and which, because of its local character and the practical difficulties involved, may never be adequately dealt with by Congress. Because of its local character also there may be wide scope for local regulation without substantially impairing the national interest in the regulation of commerce by a single authority and without materially obstructing the free flow of commerce, which were the principal objects sought to be secured by the Commerce Clause. See *Minnesota Rate Cases*, *supra*, 398-412; *Thompson* v. *California*, *supra*, 113. There may also be, as in the present case, local regulations whose effect upon the national commerce is such as not to conflict but to coincide with a policy which Congress has established with respect to it.

Examination of the evidence in this case and of available data of the raisin industry in California, of which we may take judicial notice, leaves no doubt that the evils attending the production and marketing of raisins in that state present a problem local in character and urgently demanding state action for the economic protection of those engaged in one of its important industries.[9] Between 1914 and 1920 there was a spectacular rise in price of all

[9] The principal statistical sources are U. S. Tariff Commission, Grapes, Raisins and Wines, Report No. 134, Second Series, issued pursuant to 19 U. S. C. § 1332, and the following publications of the U. S. Department of Agriculture: Yearbook of Agriculture (published annually until 1936); Agricultural Statistics (published annually since 1936); Crops and Markets (published quarterly); Season Average Prices and Value of Production, Principal Crops, 1940 and 1941 (Dec. 18, 1941). For general discussions of the economic status of the raisin industry see Grapes, Raisins and Wines, *supra*; Shear and Gould, Economic Status of the Grape Industry, University of California, Agricultural Experiment Station Bulletin No. 429 (1927); Shear and Howe, Factors Affecting California Raisin Sales and Prices, 1922-29, Giannini Foundation of Agricultural Economics, Paper No. 20 (1931).

types of California grapes, including raisin grapes. The price of raisins reached its peak, $235 per ton, in 1921, and was followed by large increase in acreage with accompanying reduction in price. The price of raisins in most years since 1922 has ranged from $40 to $60 per ton but acreage continued to increase until 1926 and production reached its peak, 1,433,000 tons of raisin grapes and 290,000 tons of raisins, in 1938. Since 1920 there has been a substantial carry over of 30 to 50% of each year's crop. The result has been that at least since 1934 the industry, with a large increase in acreage and the attendant fall in price, has been unable to market its product and has been compelled to sell at less than parity prices and in some years at prices regarded by students of the industry as less than the cost of production.[10]

The history of the industry at least since 1929 is a record of a continuous search for expedients which would stabilize the marketing of the raisin crop and maintain a price standard which would bring fair return to the producers.[11] It is significant of the relation of the local interest in maintaining this program to the national interest in interstate commerce, that throughout the period from 1929 until the adoption of the prorate program for the 1940 raisin crop, the national government has contributed to these efforts either by its establishment of marketing programs pursuant to Act of Congress or by aiding programs sponsored by the state. Local cooperative market stabilization programs for raisins in 1929 and 1930 were approved by the Federal Farm Board which supported them with large loans.[12] In 1934 a marketing agreement for California raisins was put into effect under § 8(2) of the Agricultural Adjustment Act of 1933, which authorized the Secretary of Agriculture,

as amended, 48 Stat. 528,

[10] Studies made under the auspices of the University of California indicate that the cost of production of Thompson Seedless raisins, including the growers' labor, a management charge, depreciation, and interest on investment, is $49.58 per ton on a farm yielding two tons per acre, and $72.07 per ton on a farm yielding one ton per acre. A two-ton yield is described as "good"; a one-ton yield as "usual". Adams, Farm Management Crop Manual, University of California Syllabus Series No. 278 (1941) 142-5. Another student has computed the cost of production at $53.96 for a two-ton per acre yield, about $65 for a 1.5 ton yield, and $90 for a one-ton yield. Shultis, Standards of Production, Labor, Material and other Costs for Selected Crops and Livestock Enterprises, University of California Extension Service (1938) 12. Field prices for Thompson Seedless raisins were below $49.50 in 1923, 1928, 1932, and 1938; since 1922 they have been at $65.00 or higher in only 5 years, and have only once been as high as $72.00. Grapes, Raisins and Wines, *supra*, 149. For parity prices for raisins, see *supra*, note 4.

[11] For discussion of private efforts within the industry prior to 1929 to regulate the marketing of raisins, see Grapes, Raisins and Wines, *supra*, 153-5.

[12] See Annual Report of the Federal Farm Board (1930) 18, 73; (d. (1931) 59-61, 91; Grapes, Raisins and Wines, *supra*, 62-64; S. W. Shear, The California

in order to effectuate the Act's declared policy of achieving parity prices, to enter into marketing agreements with processors, producers and others engaged in handling agricultural commodities "in the current of or in competition with, or so as to burden, obstruct, or in any way affect, interstate or foreign commerce".[13]

Raisin Proration Zone No. 1 was organized in the latter part of 1937. No proration program was adopted for the 1937 crop but loans of $1,244,000 were made on raisins of that crop by the Commodity Credit Corporation.[14] In aid of a proration program adopted under the California Act for the 1938 crop, a substantial part of that crop was pledged to the Commodity Credit Corporation as security for a loan of $2,688,000, and was ultimately sold to the Federal Surplus Commodities Corporation for relief distribution.[15] Substantial purchases of raisins of the 1939 crop were also made by Federal Surplus Commodities Corporation, although no proration program was adopted for that year.[16] In aid of the

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Grape Control Plan, Giannini Foundation of Agricultural Economics, Paper No. 22 (1931); Stokdyk and West, The Farm Board (1930) 135-9. Loans of $4,500,000 in 1929 and $6,755,000 in 1930 were made by the Federal Farm Board. Shear, *supra*, states that the 1930 program, which provided for the formation of a single marketing agency, and the destruction or diversion to by-product use of surplus raisins, "was designed by the Federal Farm Board".

The Federal Farm Board was created by § 2 of the Agricultural Marketing Act of 1929, 46 Stat. 11, which authorized the Board to make loans to co-operative associations to aid in "the effective merchandising of agricultural commodities . . ." (§ 7) so as to achieve the statutory objective of placing agriculture on a "basis of economic equality with other industries" (§ 1).

[13] See U. S. Dept. of Agriculture, Agricultural Adjustment in 1934, 202. The marketing program adopted is published by the Agricultural Adjustment Administration, Department of Agriculture, as Marketing Agreement Series—Agreement No. 44, License Series, License No. 55. It was in effect from May 29, 1934 to Sept. 14, 1935. The agreement provided for the creation of a control board on which representatives of packers and growers should have an equal voice. Subject to the approval of the Secretary of Agriculture the control board could fix minimum prices to be paid growers and require a percentage of the crop to be delivered to the control board. 15% of the 1934 crop was required to be delivered to the board, and prices for that crop were fixed at $60, $65 and $70 per ton for Muscat, Sultana, and Thompson Seedless raisins respectively.

[14] Report of the Commodity Credit Corporation (1940) 16. These raisins were ultimately sold to the Federal Surplus Commodities Corporation for relief distribution. *Ibid.*; Report of the Federal Surplus Commodities Corporation (1938) 16.

[15] Report of Commodity Credit Corporation (1940) 16; Report of the Associate Administrator of the Agricultural Adjustment Administration in Charge of the Division of Marketing and Marketing Agreements, and the President of the Federal Surplus Commodities Corporation (1939) 52. The federal loan was conditioned upon the adoption of a state proration program by which 20% of the crop was delivered into a stabilization pool.

[16] Cecil, The 1940 Raisin Proration Program, *supra*, 48; Report of the Federal Surplus Commodities Corporation (1940) 6.

1940 program, as we have already noted, the Commodity Credit Corporation made loans of $5,000,000, and 33,000 tons of the raisins pledged to it were sold to the Federal Surplus Marketing Administration.[17]

This history shows clearly enough that the adoption of legislative measures to prevent the demoralization of the industry by stabilizing the marketing of the raisin crop is a matter of state as well as national concern and, in the absence of inconsistent Congressional action, is a problem whose solution is peculiarly within the province of the state. In the exercise of its power the state has adopted a measure appropriate to the end sought. The program was not aimed at nor did it discriminate against interstate commerce, although it undoubtedly affected the commerce by increasing the interstate price of raisins and curtailing interstate shipments to some undetermined extent. The effect on the commerce is not greater, and in some instances was far less, than that which this Court has held not to afford a basis for denying to the states the right to pursue a legitimate state end. Cf. *Kidd* v. *Pearson, supra; Sligh* v. *Kirkwood, supra; Champlain Refining Co.* v. *Commission, supra; South Carolina Highway Department* v. *Barnwell Bros., supra,* and cases cited at p. 189 and notes 4 and 5; *California* v. *Thompson, supra,* 113-15, and cases cited.

In comparing the relative weights of the conflicting local and national interests involved it is significant that Congress, by its agricultural legislation, has recognized the distressed condition of much of the agricultural production of the United States, and has authorized marketing procedures, substantially like the California prorate program, for stabilizing the marketing of agricultural products. Acting under this legislation the Secretary of Agriculture has established a large number of market stabilization programs for agricultural commodities moving in interstate commerce in various parts of the country, including seven affecting California crops.[18] All involved attempts in one way or another to prevent over-production of agricultural products and excessive competition in marketing them, with price stabilization as the ultimate objective. Most if not all had a like effect in restricting shipments and raising

[17] The Commodity Credit Corporation similarly made loans on the 1937, 1938, and 1940 crops of dried prunes, the loans on the 1938 and 1940 crops being in aid of proration programs which were very similar to those adopted for raisins. Report of the President of the Commodity Credit Corporation (1940) 15, 21; *id.* (1941) 13-14, 21; Report of the Sulplus Marketing Administration (1941) 33-4.

or maintaining prices of agricultural commodities moving in interstate commerce.

It thus appears that whatever effect the operation of the California program may have on interstate commerce, it is one which it has been the policy of Congress to aid and encourage through federal agencies in conformity to the Agricultural Marketing Agreement Act, and § 302 of the Agricultural Adjustment Act. Nor is the effect on the commerce greater than or substantially different in kind from that contemplated by the stabilization programs authorized by federal statutes. As we have seen, the Agricultural Marketing Agreement Act is applicable to raisins only on the direction of the Secretary of Agriculture who, instead of establishing a federal program has, as the statute authorizes, cooperated in promoting the state program and aided it by substantial federal loans. Hence we cannot say that the effect of the state program on interstate commerce is one which conflicts with Congressional policy or is such as to preclude the state from this exercise of its reserved power to regulate domestic agricultural production.

We conclude that the California prorate program for the 1940 raisin crop is a regulation of state industry of local concern, which, in all the circumstances of this case which we have detailed, does not impair national control over the commerce in a manner or to a degree forbidden by the Constitution.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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[18] Twenty-eight such programs affecting milk, and nineteen affecting other agricultural commodities, were in effect during the fiscal year ending June 30, 1941. Report of the Surplus Marketing Administration (1941) pp. 7, 12. For discussions of the nature and purpose of these programs see the annual reports of the Agricultural Adjustment Administration; Nourse, Marketing Agreements under the A. A. A. (1935).